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TRUSTS IN FOREIGN COUNTRIES

LAWS AND REFERENCES

CONCERNING

INDUSTRIAL COMBINATIONS

IN

AUSTRALIA, CANADA, NEW ZEALAND, AND CONTINENTAL EUROPE

327
U57

Printed for the use of the Committee on Interstate Commerce

U. S. Congress. Senate. Committee on interstate commerce

WASHINGTON
GOVERNMENT PRINTING OFFICE
1911

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TRUSTS IN FOREIGN COUNTRIES.

AUSTRALIA.

THE AUSTRALIAN INDUSTRIES PRESERVATION ACT, 1906.

[As amended by the acts of 1907, 1909, and 1910.]

AN ACT For the preservation of Australian industries, and for the repression of destructive monopolies.

[Assented to Sept. 24, 1906.]

Be it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:

PART I.—*Preliminary.*

1. This act may be cited as the Australian industries preservation act, 1906–1910.

2. This act is divided into parts as follows: Part I, preliminary; Part II, repression of monopolies; Part III, prevention of dumping.

3. In this act, unless the contrary intention appears—

"Commercial trust" includes a combination, whether wholly or partly within or beyond Australia, of separate and independent persons (corporate or unincorporate), whose voting power or determinations are controlled or controllable by (*a*) the creation of a trust as understood in equity, or of a corporation wherein the trustees or corporation hold the interests, shares, or stock of the constituent persons; or (*b*) an agreement; or (*c*) the creation of a board of management or its equivalent; or (*d*) some similar means; and includes any division, part, constituent person, or agent of a commercial trust.

"Inadequate remuneration for labor" includes inadequate pay or excessive hours or any terms or conditions of labor or employment unduly disadvantageous to workers.

"Person" includes corporation and firm and a commercial trust.

"The comptroller general" means the comptroller general of customs.

"Answer questions" means that the person on whom the obligation of answering questions is cast shall to the

best of his knowledge, information, and belief truly answer all questions on the subject mentioned that the comptroller general or the person named by him shall ask.

"Produce documents" means that the person on whom the obligation to produce documents is cast shall to the best of his power produce to the comptroller general or to the person named by him all documents relating to the subject matter mentioned.

PART II.—*Repression of monopolies.*

4. (1) Any person who, either as principal or as agent, makes or enters into any contract, or is or continues to be a member of or engages in any combination in relation to trade or commerce with other countries or among the States—(*a*) in restraint of or with intent to restrain trade or commerce; or (*b*) to the destruction or injury of or with intent to destroy or injure by means of unfair competition any Australian industry, the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers, is guilty of an offense.

Penalty, £500, r, in the case of a continuing offense, £500 for each day during which the offense continues.

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

(3) It shall be a defense to a proceeding for an offense under paragraph (*a*) of subsection (1) of this section, and an answer to an allegation that a contract was made or entered into in restraint of, or with intent to restrain, trade or commerce, if the party alleged to have contravened this section proves (*a*) that the matter or thing alleged to have been done in restraint of, or with intent to restrain, trade or commerce, was not to the detriment of the public; and (*b*) that the restraint of trade or commerce effected or intended was not unreasonable.

(Section 5 repealed.)

6. (1) For the purposes of section 4 and section 10 of this act, unfair competition means competition which is unfair in the circumstances; and in the following cases the competition shall be deemed to be unfair unless the contrary is proved:

(*a*) If the defendant is a commercial trust.

(*b*) If the competition would probably or does in fact result in an inadequate remuneration for labor in the Australian industry.

(*c*) If the competition would probably or does in fact result in creating substantial disorganization in Australian industry or throwing workers out of employment.

(*d*) If the defendant, with respect to any goods or services which are the subject of the competition, gives, offers, or promises to any person any rebate, refund, dis-

count, or reward upon condition that that person deals, or in consideration of that person having dealt, with the defendant to the exclusion of other persons dealing in similar goods or services.

(2) In determining whether the competition is unfair, regard shall be had to the management, the processes, the plant, and the machinery employed or adopted in the Australian industry affected by the competition being reasonably efficient, effective, and up to date.

7. (1) Any person who monopolizes or attempts to monopolize, or combines or conspires with any other person to monopolize, any part of the trade or commerce with other countries or among the States, is guilty of an indictable offense.

Penalty, £500 for each day during which the offense continues, or one year's imprisonment, or both; or, in the case of a corporation, £1,000 for each day during which the offense continues.

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

(3) The attorney general may elect, instead of proceeding by indictment for an offense against this section, to institute proceedings in the high court by way of civil action for the recovery of the pecuniary penalties for the offense; in which case the action shall be tried before a justice of that court without a jury.

7A. (1) Any person who, in relation to trade or commerce with other countries or among the States, either as principal or agent, in respect of dealings in any goods or services gives, offers, or promises to any other person any rebate, refund, discount, concession, or reward for the reason, or upon the condition, express or implied, that the latter person (*a*) deals, or has dealt, or will deal, or intends to deal exclusively with any person, either in relation to any particular goods or services or generally; or (*b*) deals, or has dealt, or will deal, or intends to deal, exclusively, with members of a commercial trust, either in relation to any particular goods or services or generally; or (*c*) does not deal, or has not dealt, or will not deal, or does not intend to deal with certain persons, either in relation to any peraticular goods or services or generally; or (*d*) is or becomes a member of a commercial trust; is guilty of an offense.

Penalty, £500.

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

(3) It shall be a defense to a prosecution under this section, and an answer to an allegation that a contract was made or entered into in contravention of this section, if the party alleged to have contravened this section proves that the matter or thing alleged to have been done in contravention of this section was not to the detriment of the public, and did not constitute competition which

was unfair in the circumstances, and was not destructive of or injurious to any Australian industry.

7B. Any person who, in relation to trade and commerce with other countries or among the States, either as principal or agent, refuses either absolutely or except upon disadvantageous conditions to sell or supply to any other person any goods or services for the reason that the latter person (*a*) deals, or has dealt, or will deal, or intends to deal with any person; or (*b*) deals, or has dealt, or will deal, or intends to deal with persons who are not members of a commercial trust; or (*c*) is not a member of a commercial trust; is guilty of an offense.

Penalty, £500.

(Section 8 repealed.)

9. Whoever aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in or privy to (*a*) the commission of any offense against this part of this act; or (*b*) the doing of any act outside Australia which would, if done within Australia, be an offense against this part of this act; shall be deemed to have committed the offense.

Penalty, £500.

10. (1) The attorney general, or any person thereto authorized by him, may institute proceedings in the high court to restrain by injunction after hearing and determining the merits and not by way of interlocutory order the carrying out of any contract made or entered into after the commencement of this act or any combination which (*a*) is in restraint of trade or commerce; or (*b*) is destructive or injurious, by means of unfair competition, to any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers.

Provided, that this section shall only apply to contracts or combinations in relation to commerce with other countries or among the States.

(2) On the conviction of any person for an offense under this part of this act the justice before whom the trial takes place shall, upon application by or on behalf of the attorney general or any person thereto authorized by him, grant an injunction restraining the convicted person and his servants and agents from the repetition or continuance of the offense of which he has been convicted.

10A. (1) Any person who does any act or thing in disobedience of an injunction granted under this part of this act shall be guilty of an offense.

Penalty, £500 for each day during which the offense continues.

(2) This section shall not be deemed to derogate from the power of the high court, apart from this section, to enforce obedience to the injunction.

11. (1) Any person who is injured in his person or property by any other person, by reason of any act or

thing done by that other person in contravention of this part of this act, or by reason of any act or thing done in contravention of any injunction granted under this part of this act, may, in the high court, before a justice, without a jury, sue for and recover treble damages for the injury.

(2) No person shall, in any proceeding under this section, be excused from answering any question put either viva voce or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may criminate or tend to criminate him; but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury.

12. The jury panel for the trial of any offense against this part of this act, or for the trial of any action or issue under this part of this act, shall be taken from the list of special jurors (if any) in the State or part of the Commonwealth in which the trial takes place.

13. (1) Proceedings for the recovery of pecuniary penalties for offenses against this part of this act (other than indictable offenses or offenses against section 15B, section 15C, or section 15E) shall be instituted in the high court by way of civil action and shall be tried before a justice of that court without a jury.

(2) Any offense against this part of this act committed by the person who has previously been convicted of any offense against this part of this act shall be an indictable offense, punishable on conviction by a penalty not exceeding £500 or imprisonment for any term not exceeding one year, or both; in the case of a corporation, by a penalty not exceeding £500.

14. (1) No proceeding for an indictable offense or for the recovery of penalties shall be instituted under this part except by the attorney general or some person authorized by him.

(2) No other proceeding shall be instituted under this part without the written consent of the attorney general.

14A. In any proceeding for an offense against this part of this act, any indictment, information, statement of claim, conviction, warrant, or other process shall suffice if the offense is set forth as nearly as may be in the words of this act.

14B. No person shall, in any proceeding for an offense against this part of this act, be excused from answering any question, put either viva voce or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may tend to criminate him or make him liable to a penalty; but his answer shall not be admissible in evidence against him in any civil or criminal proceeding other than a proceeding for an offense against this act or a prosecution for perjury.

14C. In any proceeding for an offense against this part of this act, wherein a combination or conspiracy or attempted combination or conspiracy in contravention of this act is alleged, any book, document, paper, or writing containing (*a*) any minute, note, record, or memorandum of any proceeding at any meeting of the persons or any of the persons alleged to have been parties or privy to the combination, conspiracy, or attempt; or (*b*) any entry purporting to be a copy of or extract from any such book, document, paper, or writing, shall, upon proof that it was produced by or came from the custody of those persons, or any of them, or of a responsible officer or a representative of those persons, or any of them, (1) be admissible in evidence against those persons; and (2) be evidence that the matter and things thereby appearing to have been done by those persons, or any of them, were so done, and that any person thereby appearing to have been present at the meeting was so present.

14D. In any proceeding for an offense against this part of this act, any book, letter, document, paper, or writing, or anything purporting to be a copy of, or extract from, any book, letter, document, paper, or writing, containing any reference to any matter or thing alleged to be done in contravention of this act, shall, upon proof that it was produced by or came from the custody of a person charged with the offense, or a responsible officer or a representative of that person (*a*) be admissible in evidence against that person; and (*b*) be evidence of the matters and things thereby appearing, and that the book, letter, document, paper, or writing (or, in the case of a copy, that the original thereof) was written, signed, dispatched, and received by the persons by whom it purports to have been written, signed, dispatched, and received, and that any such copy or extract is a true copy of, or extract from, the original of or from which it purports to be a copy or extract.

15. (1) Any person party to a contract or member of a combination or in any way concerned in carrying out the contract or the objects of the combination may (*a*) lodge with the attorney general a statutory declaration by himself, or in the case of a corporation by some one approved of in that behalf by the attorney general, setting forth truly, fully, and completely the terms and particulars of the contract, or the purposes, objects, and terms of agreement or constitution of the combination, as the case may be, and an address in Australia to which notices may be sent by the attorney general; and (*b*) publish the statutory declaration in the Gazette.

(2) The attorney general may at any time send notice to the person above mentioned (hereinafter called the declarant), to the address mentioned in the statutory declaration, that he considers the contract or combination likely to restrain trade or commerce to the detriment of the public, or to destroy or injure an Australian industry by unfair competition.

(3) In any proceeding against the declarant in respect of any offense against section 4 of this act, alleged to have been committed by him in relation to the contract or combination after the time the statutory declaration has been lodged and published, and before any notice as aforesaid has been sent to him by the attorney general, it shall be deemed (but as regards the declarant only and not as regards any other person) that the declarant had no intent to contravene the provisions of the section if he proves that the statutory declaration contains a true, full, and complete statement of the terms and particulars of the contract, or the purposes, objects, and terms of agreement or constitution of the combination, as the case may be, at the date of the statutory declaration and at the date of the alleged offense.

15A. In any prosecution for an offense against sections 4, 7, 7A, 7B, or 9 of this act the averments of the prosecutor contained in the information declaration or claim shall be deemed to be proved in the absence of proof to the contrary, but so that (*a*) the averment in the information of intent shall not be deemed sufficient to prove such intent; and (*b*) in all proceedings for an indictable offense the guilt of the defendant must be established by evidence.

15B. (1) If the comptroller general believes that an offense has been committed against this part of this act, or if a complaint has been made in writing to the comptroller general that an offense has been committed against this part of this act and the comptroller general believes that the offense has been committed, he may by writing under his hand require any person whom he believes to be capable of giving any information in relation to the alleged offense to answer questions and to produce documents to him or to some person named by him in relation to the alleged offense.

(2) No person shall refuse or fail to answer questions or produce documents when required to do so in pursuance of this section.

Penalty, £50.

(3) The comptroller general or any person to whom any documents are produced in pursuance of this section may take copies of or extracts from those documents.

(4) No person shall be excused from answering any questions or producing any documents when required to do so under this section on the ground that the answer to the question or the production of the document might tend to criminate him or make him liable to a penalty; but his answer shall not be admissible in evidence against him in any civil or criminal proceeding other than a proceeding for an offense against this part of this act.

15C. (1) Whenever a complaint on oath has been made in writing to the comptroller general that any person or any foreign corporation or any trading or financial corporation formed within the Commonwealth has been guilty of any offense against this part of this act, the

comptroller general, if he believes the complaint to be well founded, may, by writing, require any such person or foreign corporation or trading or financial corporation or any member, officer, or agent of any such corporation, to produce and hand over to him or to some person appointed by him in writing all books and documents relating to the subject matter of the complaint and all books and documents of any kind whatsoever wherein any entry or memorandum appears in any way relating to the subject matter of the complaint.

(2) Every person or foreign corporation or trading or financial corporation, required by the comptroller general as aforesaid to produce to him or to some person appointed by him in writing any books or documents shall forthwith produce and hand over such books or documents accordingly.

Penalty, £100.

(3) The comptroller general or any person appointed by him in writing may inspect all books and documents produced in pursuance of this section and may make copies of or extracts from those books or documents.

15D. The comptroller general may impound or retain any book or document produced to him or to any person so appointed by him in pursuance of the preceding section, but the person or corporation otherwise entitled to such book or document shall in lieu thereof be entitled to a copy certified as correct by the comptroller general, and such certified copy shall be receivable in all courts as evidence and of equal validity with the original. And until such certified copy is supplied the comptroller general may at such times and places as he shall think proper permit such person, or in the case of a corporation any person appointed for the purpose by the corporation, to inspect and take extracts from the books or documents so impounded or retained.

15E. No person shall disclose any information gained by him in the exercise of the powers conferred by the last three preceding sections except (*a*) to the attorney general, or some person authorized by him; (*b*) to the comptroller general; (*c*) when giving evidence in any proceeding for an offense against this part of this act.

Penalty, £50.

PART III.—*Prevention of Dumping.*[1]

16. In this part of this act—

"Justice" means a justice of the high court.

"The comptroller general" means the comptroller general of customs.

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[1]Acts of the Commonwealth of Australia, 1901. No. 6 of 1901—An act relating to the customs. (Assented to Oct. 3, 1901.) Part I—Introductory. 1. This act may be cited as the customs act of 1901. * * * 50. No prohibited goods shall be imported. Penalty, £100.

"Imported goods" and "Australian goods" include goods of those classes, respectively, and all parts or ingredients thereof.

"Produced" includes manufactured, and "Producer" includes manufacturer.

"Trade" includes production of every kind.

"Industries" shall not include industries in which in the opinion of the comptroller general or justice as the case may be, the majority of workers do not receive adequate remuneration or are subject to unfair terms or conditions of labor or employment.

17. Unfair competition has in all cases reference to competition with those Australian industries, the preservation of which, in the opinion of the comptroller general or a justice as the case may be, is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers.

18. (1) For the purposes of this part of this act, competition shall be deemed to be unfair, unless the contrary is proved, if (*a*) under ordinary circumstances of trade it would probably lead to the Australian goods being no longer produced or being withdrawn from the market or being sold at a loss unless produced at an inadequate remuneration for labor; or (*b*) the means adopted by the person importing or selling the imported goods are, in the opinion of the comptroller general or a justice as the case may be, unfair in the circumstances; or (*c*) the competition would probably or does in fact result in an inadequate remuneration for labor in the Australian industry; or (*d*) the competition would probably or does in fact result in creating any substantial disorganization in Australian industry or throwing workers out of employment; or (*e*) the imported goods have been purchased abroad by or for the importer, from the manufacturer or some person acting for or in combination with him or accounting to him, at prices greatly below their ordinary cost of production where produced or market price where purchased; or (*f*) the imported goods are imported by or for the manufacturer or some person acting for or in combination with him or accounting to him, and are being sold in Australia at a price which is less than gives the person importing or selling them a fair profit upon their fair foreign market value, or their fair selling value if sold in the country of production, together with all charges after shipment from the place whence the goods are exported directly to Australia (including customs duty).

(2) In determining whether the competition is unfair regard shall be had to the management, the processes, the plant, and the machinery employed or adopted in the Australian industry affected by the competition being reasonably efficient, effective, and up-to-date.

19. (1) The comptroller general, whenever he has received a complaint in writing and has reason to believe that any person (hereinafter called the importer), either singly or in combination with any other person within or beyond the Commonwealth, is importing into Australia goods (hereinafter called imported goods) with intent to destroy or injure any Australian industry by their sale or disposal within the Commonwealth in unfair competition with any Australian goods, may certify to the minister accordingly.

(2) The certificate of the comptroller general shall specify (*a*) the imported goods; (*b*) the Australian industry and goods; (*c*) the importer; (*d*) the grounds or unfairness in the competition; (*e*) the name, address, and occupation of any person (not being an officer of the public service) upon whose information he may have acted.

(3) The comptroller general may add to his certificate a statement of such other facts as in his opinion ought to be specified to give the importer fair notice of the matters complained of.

(4) The comptroller general shall, before making his certificate, give to the importer an opportunity to show cause why the certificate should not be made and furnish him with a copy of the complaint.

(5) On receipt of the certificate the minister may (*a*) by order in writing refer to a justice the investigation and determination of the question whether the imported goods are being imported with the intent alleged; and if so, whether the importation of the goods should be prohibited, either absolutely or subject to any specified conditions or restrictions or limitations; (*b*) notify in the Gazette that the question has been so referred; and (*c*) forward to the justice a copy of the certificate.

20. From the date of the Gazette notice until the publication in the Gazette of the determination of the question by the justice, goods, the subject of the investigation, shall not be imported unless the importer (*a*) gives to the minister a bond with such sureties as the minister approves, for such amount (not exceeding the true value of the goods for customs purposes) as the minister considers just and reasonable by way of precaution in the circumstances, and conditioned to be void if the justice determines the question in favor of the importer; or (*b*) gives such other security and complies with such other conditions as the minister approves; and those goods shall, if imported in contravention of this section, be deemed to be prohibited imports within the meaning of the customs act 1901, and the provisions of that act shall apply to the goods accordingly.

21. (1) The justice shall proceed to expeditiously and carefully investigate and determine the matter, and for the purpose of the proceeding shall have power to inquire as to any goods, things, and matters whatsoever which he considers pertinent, necessary, or material.

(2) For the purpose of the proceeding the justice shall sit in open court, and shall have all the powers of a justice in the exercise of the ordinary jurisdiction of the high court. He may, if he thinks fit and shall on the application of either party, state a case for the opinion of the full court upon any question of law arising in the proceeding. And he may, if he thinks fit at any stage of the proceeding, refer the investigation and determination of the matter to the full court, which shall in that case have all the powers and functions of a justice under this part of this act.

(3) The certificate of the comptroller general shall be prima facie evidence of facts by subsection (2) of section 19 of this act, required to be specified therein.

(4) In addition to the comptroller general and the importer the justice may, if he thinks fit, allow any person interested in importing imported goods to be represented at the investigation.

(5) The justice shall be guided by good conscience and the substantial merits of the case, without regard to legal forms or technicalities, or whether the evidence before him is in accordance with the law of evidence or not.

(6) No person shall in any proceeding before a justice be excused from answering any question or producing documents on the ground that the answer or production may criminate or tend to criminate him, but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury.

(7) The justice shall forward his determination to the minister.

(8) In the case of the following agricultural implements: Plows of all kinds over 1½ hundredweight, tine harrows, disk harrows, grain drills, combined grain-seed and manure drills, land rollers, cultivators, chaff cutters, seed cleaners, stripper harvesters, and any other implement usually used in agriculture, the justice shall inquire into and determine the question whether the goods are being imported with the effect of benefiting the primary producers without unfairly injuring any other section of the community of the Commonwealth.

(9) The determination of the justice shall be final and conclusive and without appeal and shall not be questioned in any way.

22. (1) Upon the receipt of the determination of the justice the minister shall forthwith cause it to be published in the Gazette.

(2) If the justice determines that the imported goods are being imported with the intent alleged, and that their importation should be prohibited either absolutely or subject to any specified conditions or restrictions or limitations of any kind whatsoever (*a*) the determination when so published shall have the effect of a proclamation under the customs act, 1901, prohibiting the importation of the goods either absolutely or subject to those condi-

tions or restrictions or limitations as the case may be; and in that case the provisions of that act shall apply to goods so prohibited; and (*b*) the justice may by order reduce the amount recoverable under any bond given in pursuance of this part of this act to such sum as the importer satisfies him is reasonable and just in the circumstances.

23. The governor general may at any time, by proclamation, simultaneously with or subsequently to any prohibition under this part of this act, rescind in whole or in part the prohibition or any condition or restriction or limitation on importation imposed thereby.

24. In all cases of prohibition the determination of the justice, and any proclamation affecting the same, shall be laid before both houses of the Parliament within seven days after the publication in the Gazette, or, if the Parliament is not then sitting, within seven days after the next meeting of Parliament.

25. The justices of the high court or a majority of them may make rules of court not inconsistent with this act, for regulating the proceedings before a justice under this part of this act and for carrying this part of this act into effect.

26. (1) Any person who willfully (*a*) makes to the comptroller general or to any officer of customs any false statement in relation to any action or proceedings taken or proposed to be taken under this part of this act; or (*b*) misleads the comptroller general in any particular likely to affect the discharge of his duty under this act shall be guilty of an offense.

Penalty, £100 or 12 months' imprisonment.

(2) Any person convicted under the last preceding subsection may be ordered by the justice to whom a question is referred under this part of this act to pay the whole or part of the costs incurred by the importer in whose favor the question is determined.

EXCISE TARIFF.

[No. 16 of 1906.]

AN ACT Relating to duties of excise.[1]

[Assented to Oct. 12, 1906.]

Be it enacted by the King's Most Excellent Majesty, the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title.

1. This act may be cited as the excise tariff, 1906.

Excise duties on agricultural machinery.

2. Duties of excise shall on and from the 1st day of January, 1907, be imposed on the dutiable goods specified in the schedule at the rates specified in the said schedule.

Provided, That this act shall not apply to goods manufactured by any person in any part of the Commonwealth under conditions as to the remuneration of labor which

[1] The act relating to agricultural machinery (No. 16 of 1906) was declared unconstitutional by the high court in July, 1908.

(*a*) are declared by resolution of both houses of the Parliament to be fair and reasonable; or (*b*) are in accordance with an industrial award under the Commonwealth conciliation and arbitration act, 1904; or (*c*) are in accordance with the terms of an industrial agreement filed under the Commonwealth conciliation and arbitration act, 1904; or (*d*) are, on an application made for the purpose to the president of the Commonwealth court of conciliation and arbitration, declared to be fair and reasonable by him or by a judge of the supreme court of a State or any person or persons who compose a State industrial authority to whom he may refer the matter.

THE SCHEDULE.

Excise duties.

Dutiable goods.		Duties.
FIXED RATES.		
Stripper harvesters	each	£6
Strippers	do	£3
Metal parts of stripper harvesters and strippers	per pound	7s. 8d.
AD VALOREM RATES.		
Stump-jump plows	per cent	12½
Disk cultivators	do	
Winnowers, horse and other power	do	
Combined corn sheller, husker, and bagger	do	
Combined corn sheller and husker	do	
Drills:		12½
Fertilizer	do	
Seed	do	
Grain	do	
And attachments thereto	do	
Plows, other	do	10
Plowshares	do	
Harrows	do	
Chaff cutters and horse gear	do	
Cultivators, other than disk	do	
Scarifiers	do	
Plow moldboards	do	
Corn shellers	do	
Corn huskers	do	

EXEMPTIONS.

Hand-worked rakes and plows combined.
Hay tedders.
Maize harvesters.
Maize binders.
Maize planters.
Moldboard plates in the rough and not cut into shape.
Potato sorters.
Potato raisers or diggers.

(Commonwealth Acts: Australia, vol. 5, 1906, No. 16, p. 59.)

THE PATENTS ACT 1903.

[No. 21 of 1903. As amended by the patents act 1906 (No. 19 of 1906), and by the patents act 1909 (No. 17 of 1909.]

AN ACT Relating to patents of inventions.

[Assented to Oct. 22, 1903.]

PART V.—*Working of patents and compulsory licenses.*

87. (1) Any person interested may, after the expiration of two years from the granting of the patent, present a petition to the commissioner alleging that the reason- Compulsory licenses. 2 Edw. 7, c. 34, s. 2.

able requirements of the public with respect to a patented invention have not been satisfied and praying for the grant of a compulsory license, or, in the alternative, for the revocation of the patent.

(2) The commissioner shall consider the petition and if the parties do not come to an arrangement between themselves, the commissioner, if satisfied that a prima facie case has been made out, shall refer the petition to the high court or the supreme court, and if the commissioner is not so satisfied he may dismiss the petition.

(3) Where any such petition is referred by the commissioner to the high court or the supreme court, and it is proved to the satisfaction of the court that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered, by rule or order, to grant licenses on such terms as the said court thinks just, or if the court is of opinion that the reasonable requirements of the public will not be satisfied by the grant of licenses the court may order the revocation of the patent.

Provided, that no order of revocation shall be made before the expiration of three years from the date of the patent or if the patentee gives satisfactory reasons for his default.

(4) On the hearing of any petition under this section the patentee, and any person claiming an interest in the patent as exclusive licensee or otherwise, shall be made parties to the proceedings, and the commissioner shall be entitled to appear and be heard.

Subsec. (5) omitted; No. 17, 1909, s. 14. 7 Edw. 7, c. 29, s. 24 (5).

* * * * *

Substituted by No. 17, 1909, s. 14.

(6) For the purposes of this section the reasonable requirements of the public shall not be deemed to have been satisfied (*a*) if, by reason of the default of the patentee (1) to manufacture to an adequate extent and supply on reasonable terms, the patented article or any parts thereof, which are necessary for its efficient working, or (2) to carry on the patented process to an adequate extent, or (3) to grant licenses on reasonable terms; any existing trade or industry, or the establishment of any new trade or industry, in Australia is unfairly prejudiced; or the demand for the patented article or the article produced by the patented process is not reasonably met; or (*b*) if any trade or industry in Australia is unfairly prejudiced by the conditions attached by the patentee, before or after the commencement of this subsection, to the purchase, hire, or use of the patented article, or to the using or working of the patented process.

(7) A rule or order directing the grant of any license under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a license and made between the parties to the proceeding.

Provision where patent is not worked to an adequate extent in the Commonwealth.

87*a*. (1) At any time not less than four years after the date of a patent, and not less than two years after the commencement of this section, any person may apply to the high court or the supreme court for an order declaring that the patented article or process is not manufactured or carried on to an adequate extent in the Commonwealth.

Inserted by No. 17, 1909, s. 15.

(2) If, on the hearing of the application, the court is satisfied that the patented article or process is manufactured or carried on exclusively or mainly outside the Commonwealth, then, subject to the provision of this section, and unless the patentee proves that the article or process is manufactured or carried on to an adequate extent in the Commonwealth, or gives satisfactory reasons why the articles or process is not so manufactured or carried on, it shall make the order applied for, to take effect either (*a*) forthwith or (*b*) at the expiration of such reasonable time as is specified in the order, unless in the meantime it is shown to the satisfaction of the court that the patented article or process is manufactured or carried on to an adequate extent in the Commonwealth:

Provided, that no such order shall be made which is at variance with any treaty, convention, arrangement, or engagement with any foreign country or part of the King's dominions.

(3) If, within the time specified in the order, the patented article or process is not manufactured or carried on to an adequate extent in the Commonwealth, but the patentee gives satisfactory reasons why it is not so manufactured or carried on, the court may make a further order extending the time so specified for any specified time not exceeding 12 months.

(4) From and after the time when an order under subsection (2) of this section takes effect the patent shall not be deemed to be infringed by the manufacture or carrying on in the Commonwealth of the patented article or process or by the vending within the Commonwealth of the patented article made within the Commonwealth.

(5) If at any time after the making of an order under subsection (2) of this section the court is satisfied that the patented article or process is not manufactured or carried on in the Commonwealth by any other person than the patentee, and that the patentee is manufacturing it or carrying it on to an adequate extent in the Commonwealth, the court may in its discretion, if it thinks it just so to do, revoke the order, which shall thenceforth cease to have effect.

(6) In any case in which the court is empowered by this section to make an order under subsection (2) thereof, it may, in its discretion, if it thinks it just so to do, instead of making such an order, order the patentee to grant a compulsory license to the applicant on such terms as the court thinks just.

(7) In any proceedings under this section the court may make such order as to costs as it thinks just, and may order the applicant to give such security as it thinks just for the costs of the proceedings and of any appeal therefrom, and in default of such security being given within the time specified by the order the proceedings or appeal shall be deemed to be abandoned.

Avoidance of certain conditions attached to the sale, etc., of patented articles. 7 Edw. 7, c. 29, s. 38. Inserted by No. 17, 1909, s. 15.

87*b*. (1) It shall not be lawful in any contract made after the commencement of this section in relation to the sale or lease of, or license to use or work, any article or process protected by patent, to insert a condition the effect of which would be (*a*) to prohibit or restrict the purchaser, lessee, or licensee from using any article or class of articles or process, whether patented or not, supplied or owned by any person other than the seller, lessor, or licensor, or his nominees; or (*b*) to require the purchaser, lessee, or licensee to acquire from the seller, lessor, or licensor, or his nominees, any article or class of articles not protected by the patent; and any such condition shall be null and void:

Provided, that this subsection shall not apply if (1) the seller, lessor, or licensor proves that, at the time the contract was entered into, the purchaser, lessee, or licensee had the option of purchasing the article or obtaining a lease or license on reasonable terms, without any such condition; and (2) the contract entitles the purchaser, lessee, or licensee to relieve himself of his liability to observe any such condition on giving the other party three months' notice in writing, and on payment in compensation for such relief in the case of a purchase of such sum, or in the case of a lease or license of such rent or royalty for the residue of the term of the contract, as may be fixed by an arbitrator appointed by the minister.

(2) Any contract relating to the lease of or license to use or work any patented article or patented process, whether made before or after the commencement of this section, may at any time after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party.

(3) Any contract made before the commencement of this section relating to the lease of or license to use or work any patented article or process, and containing any condition which, had the contract been made after the commencement of this section, would by virtue of this section have been null and void, may, at any time before the contract is determinable under the last preceding subsection, and notwithstanding anything in the same or any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party.

(4) Where under either of the two last preceding subsections any notice is given determining a contract made before the commencement of this section, the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed by the minister.

(5) The insertion by the patentee in a contract, made after the commencement of this section, of any condition which by virtue of this section is null and void, shall be available as a defense to an action for infringement of the patent, to which the contract relates, brought while that contract is in force.

(6) Nothing in this section shall (*a*) affect any condition in a contract whereby a person is prohibited from selling any goods other than those of a particular person; or (*b*) be construed as validating any contract which would, apart from this section, be invalid; or (*c*) affect any right of determining a contract or condition in a contract exercisable independently of this section; or (*d*) affect any condition in a contract for the lease of or license to use a patented article, whereby the lessor or licensor reserves to himself or his nominees the right to supply such new parts of the patented article as may be required to put or keep it in repair.

(Australia, Commonwealth Acts, 1909, vol. 8, The Patents Act, Pt. V, pp. 269 to 273.)

CANADA.

CRIMINAL LAW OF CANADA RELATIVE TO RESTRAINTS OF TRADE AND COMPETITION.

OFFENSES CONNECTED WITH TRADE AND BREACHES OF CONTRACT.

Conspiracy in restraint of trade.

496. A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade. (55–56 V., c. 29, s. 516.)

Acts in restraint not unlawful.

497. The purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of the last preceding section. (55–56 V., c. 29, s. 517.)

Penalty for conspiracy.

498. Every one is guilty of an indictable offense and liable to a penalty not exceeding $4,000 and not less than $200, or to two years' imprisonment, or, if a corporation, is liable to a penalty not exceeding $10,000 and not less than $1,000, who conspires, combines, agrees, or arranges with any other person, or with any railway, steamship, steamboat, or transportation company—

To limit transportation facilities.

(*a*) To unduly limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any article or commodity which may be subject of trade or commerce; or,

Restrain commerce.

(*b*) To restrain or injure trade or commerce in relation to any such article or commodity; or,

Lessen manufacturing.

(*c*) To unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or,

Lessen competition.

(*d*) To unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation, or supply of any such article or commodity, or in the price of insurance upon person or property.

Saving.

2. Nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees. (63–64 V., c. 46, s. 3.)

(Revised Statutes of Canada, 1906, Vol. III, chap. 146, secs. 496–498, p. 2549.)

CANADIAN LEGISLATION CONCERNING PATENTS.

Conditional validity of certain patents granted before Aug. 13, 1903.

42. The validity of any patent granted before the 13th day of August, 1903, shall not be impeached, nor shall such patent be deemed to have lapsed or expired by reason of the failure of the patentee to construct or manu-

facture the patented invention, if the patentee within the period of two years from the date of the patent allowed for such construction or manufacture, or within an authorized extension of that period, became, and at all times thereafter continued to be, ready either to furnish the patented invention himself or to license the right of using it, on reasonable terms, to any person desiring to use it, and if the patentee, or his legal representatives, within six months from the 13th day of August, 1903, had—

(*a*) Commenced, and after such commencement continuously carried on in Canada, the construction or manufacture of the patented invention in such manner as to enable any person desiring to use it to obtain it, or cause it to be made for him, at a reasonable price, at some manufactory or establishment for making or constructing it in Canada; or,

(*b*) Applied for and thereupon obtained an order of the commissioner making the patent subject to the condition hereinafter provided for authorizing application for the issue of licenses to make, construct, use, and sell the patented invention. (3 E. VII., c. 46, s. 10.)

Rights of third persons saved.

43. In the case of any patent which before the 13th day of August, 1903, had become void or the validity of which might have been impeached, and which was revived or protected from impeachment by any provision of the act, passed in the third year of His Majesty's reign, chapter 46, entituled "An act to amend the patent act," or which, by reason of any such provision, is to be deemed not to have elapsed or expired, any person who had, between the time when such patent became void or the ground for such impeachment arose, and the 13th day of August, 1903, aforesaid, commenced to manufacture, use, or sell in Canada the invention covered by such patent, may continue to manufacture, use, or sell it in as full and ample a measure as if such revival or protection from impeachment had not been effected; and, in case any person had, before the 13th day of August aforesaid, contracted with the owner of the patent for the right to manufacture, use, or sell such invention in Canada, the contract shall be deemed to have remained in full force and effect, notwithstanding that the patent had become void as aforesaid, unless the person who had so contracted with such owner can show that in the meantime, by reason or on the faith of such invalidity or lapsing, he has materially altered his position with respect to such invention, and that the revival of such contract would cause him damage. (3 E. VII., c. 46, s. 14.)

Conditions which may be substituted.

44. On the application of the applicant for a patent previous to the issue thereof, or on the application within six months after the issue of a patent of the patentee or his legal representatives, the commissioner, having regard to the nature of the invention, may order that such patent

instead of being subject to the condition with respect to the construction and manufacture of the patented invention hereinbefore provided, shall be subject to the following conditions, that is to say:

Application by any person to use patent.

(*a*) Any person, at any time while the patent continues in force, may apply to the commissioner by petition for a license to make, construct, use, and sell the patented invention, and the commissioner shall, subject to general rules which may be made for carrying out this section, hear the person applying and the owner of the patent, and, if he is satisfied that the reasonable requirements of the public in reference to the invention have not been satisfied by reason of the neglect or refusal of the patentee or his legal representatives to make, construct, use or sell the invention, or to grant licenses to others on reasonable terms to make, construct, use, or sell the same, may

Order of commissioner.

make an order under his hand and the seal of the Patent Office requiring the owner of the patent to grant a license to the person applying therefor, in such form, and upon such terms as to the duration of the license, the amount of the royalties, security for payment, and otherwise, as the commissioner, having regard to the nature of the invention and the circumstances of the case, deems just;

Assessors.

(*b*) The commissioner may, if he thinks fit, and shall on the request of either of the parties to the proceedings, call in the aid of an assessor, specially qualified, and hear the case wholly or partially with his assistance;

More than one license may be granted.

(*c*) The existence of one or more licenses shall not be a bar to an order by the commissioner for or to the granting of a license on any application under this section; and,

Forfeiture of patent for refusal to grant license.

(*d*) The patent and all rights and privileges thereby granted shall cease and determine, and the patent shall be null and void, if the commissioner makes an order requiring the owner of the patent to grant any license, and the owner of the patent refuses or neglects to comply with such order within three calendar months next after a copy of it is addressed to him or to his duly authorized agent. (3 E. VII, c. 46, s. 7.)

References to the exchequer court.

45. Any question which arises as to whether a patent, or any interest therein, has or has not become void under any of the provisions of the seven last preceding sections of this act, may be adjudicated upon by the exchequer court of Canada, which court shall have jurisdiction to decide any such questions upon information in the name of the attorney general of Canada, or at the suit of any person interested; but this section shall be not held to

Jurisdiction of other courts.

take away or affect the jurisdiction which any court other than the exchequer court of Canada possesses. (3 E. VII, c. 46, s. 8.)

(Revised Statutes of Canada, 1906, Vol. II, chap. 69, secs. 42, 43, 44, and 45.)

CONCERNING BOOKS.

If copyright owner licenses reproduction in Canada.

28. If a book as to which there is subsisting copyright under this act has been first lawfully published in any part of His Majesty's dominions, other than Canada, and if it is proved to the satisfaction of the minister that the owner of the copyright so subsisting and of the copyright acquired by such publication has lawfully granted a license to reproduce in Canada, from movable or other types, or from stereotype plates, or from electroplates, or from lithograph stones, or by any process for facsimile reproduction, an edition or editions of such book designed for sale only in Canada, the minister may, notwithstanding anything in this act, by order under his hand, prohibit the importation into Canada, except with the written consent of the licensee, of any copies of such book printed elsewhere; provided that two such copies may be specially imported for the bona fide use of any public free library or any university or college library, or for the library of any duly incorporated institution or society for the use of the members of such institution or society. (63–64 V, c. 25, s. 1.)

Minister may prohibit importation.

Proviso.

Suspension or revocation of prohibition.

29. The minister may at any time in like manner, by order under his hand, suspend or revoke such prohibition upon importation if it is proved to his satisfaction that—

(*a*) The license to reproduce in Canada has terminated or expired; or

(*b*) The reasonable demand for the book in Canada is not sufficiently met without importation; or

(*c*) The book is not, having regard to the demand therefor in Canada, being suitably printed or published; or

(*d*) Any other state of things exists on account of which it is not in the public interest to further prohibit importation. (63–64 V, c. 25, s. 2.)

Licensee, if required, to furnish copy of any edition.

30. At any time after the importation of a book has been so prohibited, any person resident or being in Canada may apply, either directly or through a bookseller or other agent, to the person so licensed to reproduce such book, for a copy of any edition of such book then on sale and reasonably obtainable in the United Kingdom or any other part of His Majesty's dominions, and it shall thereupon be the duty of the person so licensed, as soon as reasonably may be, to import and sell such copy to the person so applying therefor, at the ordinary selling price of such copy in the United Kingdom, or such other part of His Majesty's dominions, with the duty and reasonable forwarding charges added.

Otherwise prohibition may be revoked.

2. The failure or neglect, without lawful excuse, of the person so licensed to supply such copy within a reasonable time shall be a reason for which the minister may, if he sees fit, suspend or revoke the prohibition upon importation. (63–64 V, c. 25, s. 3.)

(Revised Statutes of Canada, Vol. II, 1906, chap. 70, secs. 28, 29, 30.)

LICENSES.

Business which may not be carried on without license.

17. No person, unless licensed as herein provided, shall carry on the business or trade of a distiller, rectifier, compounder, brewer or malster, manufacturer of tobacco or cigars, or bonded manufacturer, or use any utensil, machinery, or apparatus suitable for carrying on any such trade or business, or any business subject to excise, or import, make, or begin to make any still, rectifier, or other apparatus suitable for the manufacture of wash, beer, or spirits, or for the rectification or compounding of spirits. (R. S., c. 34, s. 9.)

(Revised Statutes of Canada, 1906, Vol. II, chap. 51, sec. 17.)

[4 Edward VII, Chap. 17.]

AN ACT To amend the inland revenue act.

[Assented to Aug. 10, 1904.]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R. S. C., c. 34. New section.

1. The inland revenue act, chapter 34 of the Revised Statutes, is amended by inserting the following section immediately after section 96:

License to be forfeited in case of sale or consignment of goods under restrictive conditions.

"96a. The minister of inland revenue may declare forfeited any license authorized by this act in any case where a person who, being a manufacturer of any class of goods subject to a duty of excise, either directly or indirectly (*a*) makes a sale of any such goods, or consigns them for sale upon commission, to another person, subject to the condition that the purchaser or the consignee shall not sell or deal in goods of a like kind produced by, or obtained or to be obtained from, any other manufacturer or dealer; or (*b*) makes a sale of any such goods, or consigns them for sale upon commission, to another person, upon such terms as would, in their application, give more profit to the purchaser or the consignee if he should not sell or deal in goods of a like kind produced by, or obtained or to be obtained from, any other manufacturer or dealer, and the collector of inland revenue shall thereupon cause a notice of such forfeiture to be forthwith inserted in The Canada Gazette, and from and after the insertion thereof the license shall be null and void, and no new license shall be granted to such person, and no license shall be granted to any other person for carrying on any business in the premises occupied by him until the minister of inland revenue is satisfied that the dealings above referred to have ceased.

Notice of forfeiture.

Consequences of forfeiture.

Decision of minister to be final.

"2. The decision of the minister of inland revenue as to whether any sale or consignment of goods is, or is not, subject to any such conditions, or upon any such terms,

as is or are defined in subsection 1 of this section shall be final."

(Statutes of Canada, 4 Edw. VII, 1904, Vols. I and II, chap. 17.)

POWER OF THE GOVERNOR IN COUNCIL TO REDUCE DUTIES OR PLACE ON FREE LIST.

Inquiry by judge.

18. Whenever the governor in council has reason to believe that with regard to any article of commerce there exists any trust, combination, association, or agreement of any kind among manufacturers of the article or dealers therein to unduly enhance the price of the article, or in any other way to unduly promote the advantage of the manufacturers or dealers at the expense of the consumers, the governor in council may commission or empower any judge of the supreme court of Canada or of the exchequer court of Canada, or of any superior court in any Province of Canada, to inquire in a summary way into and report to the governor in council whether such trust, combination, association, or agreement exists.

Evidence.

2. The judge may compel the attendance of witnesses, and examine them under oath, and require the production of books and papers, and shall have such other necessary powers as are conferred upon him by the governor in council for the purposes of such inquiry.

Report.

3. If the judge reports that such trust, combination, association, or agreement exists, and if it appears to the governor in council that the disadvantage to the consumers is facilitated by the duties of customs imposed on a like article when imported, then the governor in council shall place the article on the free list, or so reduce the duty on it as to give to the public the benefit of reasonable competition in such article. (60–61 V., c. 16, s. 18.)

(Revised Statutes of Canada, 1906, Vol. 1, p. 834.)

Combines and conspiracies.

12. Whenever, from or as a result of a judgment of the supreme court or exchequer court of Canada, or of any superior court, or circuit, district, or county court in Canada, it appears to the satisfaction of the governor in council that with regard to any article of commerce there exists any conspiracy, combination, agreement, or arrangement of any kind among manufacturers of such articles or dealers therein to unduly promote the advantage of the manufacturers or dealers at the expense of the consumers, the governor in council may admit the article free of duty, or so reduce the duty thereon as to give the public the benefit of reasonable competition in the article, if it appears to the governor in council that such disadvantage to the consumer is facilitated by the duties of customs imposed on a like article.

Powers of governor in council.

(Repealed by sec. 47, combines investigation act, 1910.)

Inquiry by judge.

2. Whenever the governor in council deems it to be in the public interest to inquire into any conspiracy, combi-

nation, agreement, or arrangement alleged to exist among manufacturers or dealers in any article of commerce to unduly promote the advantage of the manufacturers or dealers in such article at the expense of the consumers, the governor in council may commission or empower any judge of the supreme court, or of the exchequer court of Canada, or of any superior court or county court in Canada, to hold an inquiry in a summary way and report to the governor in council whether such conspiracy, combination, agreement, or arrangement exists.

Evidence.

3. The judge may compel the attendance of witnesses and examine them under oath and require the production of books and papers, and shall have such other necessary powers as are conferred upon him by the governor in council for the purpose of such inquiry.

Report of judge.

4. If the judge reports that such conspiracy, combination, agreement, or arrangement exists in respect of such article, the governor in council may admit the article free of duty, or so reduce the duty thereon as to give to the public the benefit of reasonable competition in the article, if it appears to the governor in council that such disadvantage to the consumer is facilitated by the duties of customs imposed on a like article.

Powers of governor in council therefrom.

(Canada, The Customs Tariff, 1907, chap. 11, sec. 12.)

COMBINES INVESTIGATION ACT.

[9–10 Edward VII, chap. 9.]

AN ACT To provide for the investigation of combines, monopolies, trusts, and mergers.

[Assented to May 4, 1910.]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short title.

1. This act may be cited as the "combines investigation act."

INTERPRETATION.

Definitions.

2. In this act, unless the context otherwise requires—

Application.

(*a*) "Application" means an application to a judge for an order directing an investigation under the provisions of this act;

(*b*) "Board" means a board of investigation established under the provisions of this act;

Combine.

(*c*) "Combine" means any contract, agreement, arrangement, or combination which has, or is designed to have, the effect of increasing or fixing the price or rental of any article of trade or commerce or the cost of the storage or transportation thereof, or of the restricting competition in or of controlling the production, manufacture, transportation, storage, sale, or supply thereof, to the detriment of consumers or producers of such article

of trade or commerce, and includes the acquisition, leasing, or otherwise taking over, or obtaining by any person to the end aforesaid, of any control over or interest in the business or any portion of the business of any other person, and also includes what is known as a trust, monopoly, or merger;

(*d*) "Department" means the department of labor; Department.

(*e*) "Judge" means, in the Province of Ontario, any judge of the high court of justice; in the Province of Quebec, any judge of the superior court; in the Provinces of Nova Scotia, New Brunswick, British Columbia, Prince Edward Island, Saskatchewan, and Alberta, any judge of the supreme court; in the Province of Manitoba, any judge of the court of King's bench; and in the Yukon Territory, any judge of the territorial court; Judge.

(*f*) "Minister" means the minister of labor; Minister.

(*g*) "Order" means an order of a judge under the provisions of this act; Order.

(*h*) "Prescribed" means prescribed by this act or by any rule or regulation made thereunder; Prescribed.

(*i*) "Registrar" means the registrar of boards of investigation appointed under this act. Registrar.

ADMINISTRATION.

3. The minister shall have the general administration of this act. Administration.

4. The governor in council shall appoint a registrar of boards of investigation, who shall have the powers and perform the duties prescribed. Registrar of boards.

(2) The office of registrar may be held either separately or in conjunction with any other office in the public service, and in the latter case the registrar may, if the governor in council thinks fit, be appointed by reference to such other office, whereupon the person who for the time being holds such office or performs its duties shall, by virtue thereof and without thereby being entitled to any additional remuneration, be the registrar. Appointment and tenure of office.

ORDER FOR INVESTIGATION.

5. Where six or more persons, British subjects resident in Canada and of full age, are of opinion that a combine exists, and that prices have been enhanced or competition restricted by reason of such combine, to the detriment of consumers or producers, such persons may make an application to a judge for an order directing an investigation into such alleged combine. Order for investigation.

(2) Such application shall be in writing addressed to the judge, and shall ask for an order directing an investigation into the alleged combine, and shall also ask the judge to fix a time and place for the hearing of the applicants or their representative. Application for order.

Form of application.

(3) The application shall be accompanied by a statement setting forth—

(*a*) The nature of the alleged combine and the persons believed to be concerned therein;

(*b*) The manner in which the alleged combine affects prices or restricts competition, and the extent to which the alleged combine is believed to operate to the detriment of consumers or producers;

(*c*) The names and addresses of the parties making the application and the name and address of one of their number or of some other person whom they authorize to act as their representative for the purposes of this act and to receive communications and conduct negotiations on their behalf.

Declaration of applicants.

(4) The application shall also be accompanied by a statutory declaration from each applicant declaring that the alleged combine operates to the detriment of the declarant as a consumer or producer, and that to the best of his knowledge and belief the combine alleged in the statement exists and that such combine is injurious to trade or has operated to the detriment of consumers or producers in the manner and to the extent described, and that it is in the public interest that an investigation should be had into such combine.

Hearing of application.

6. Within 10 days after the judge receives the application he shall fix a time and place for hearing the applicants and shall send due notice, by registered letter, to the representative authorized by the statement to receive communications on behalf of the applicants. At such hearing the applicants may appear in person or by their representative or by counsel.

Order for investigation by judge.

7. If upon such hearing the judge is satisfied that there is reasonable ground for believing that a combine exists which is injurious to trade or which has operated to the detriment of consumers or producers, and that it is in the public interest that an investigation should be held, the judge shall direct an investigation under the provisions of this act; or if not so satisfied, and the judge is of opinion that in the circumstances an adjournment should be ordered, the judge may adjourn such hearing until further evidence in support of the application is given, or he may refuse to make an order for an investigation.

Adjournment for further evidence.

Powers of judge.

(2) The judge shall have all the powers vested in the court of which he is a judge to summon before him and enforce the attendance of witnesses, to administer oaths, and to require witnesses to give evidence on oath or on solemn affirmation (if they are persons entitled to affirm in civil matters), and to produce such books, papers, or other documents or things as the judge deems requisite.

Transmission of order and evidence to registrar.

8. The order of the judge directing an investigation shall be transmitted by him to the registrar by registered letter, and shall be accompanied by the application, the statement, a certified copy of any evidence taken before the judge, and the statutory declarations. The order

shall state the matters to be investigated, the names of the persons alleged to be concerned in the combine, and the names and addresses of one or more of their number with whom, in the opinion of the judge, the minister should communicate in order to obtain the recommendation for the appointment of a person as a member of the board as hereinafter provided.

APPOINTMENT OF BOARDS.

Appointment of board.

9. Upon receipt by the registrar of the order directing an investigation the minister shall forthwith proceed to appoint a board.

Constitution of board.

10. Every board shall consist of three members, who shall be appointed by the minister under his hand and seal of office.

Members of board.

11. Of the three members of the board one shall be appointed on the recommendation of the persons upon whose application the order has been granted, one on the recommendation of the persons named in the order as being concerned in the alleged combine, and the third on the recommendation of the two members so chosen.

Recommendation of third member.

12. The persons upon whose application the order has been granted and the persons named in the order as being concerned in the alleged combine, within seven days after being requested so to do by the registrar, may each respectively recommend the name of a person who is willing and ready to act as a member of the board, and the minister shall appoint such persons members of the board.

Communications with representatives of parties.

(2) For the purpose of obtaining the recommendations referred to in subsection 1 of this section it shall be sufficient, as respects the applicants, for the registrar to communicate with the representative mentioned in the statement as authorized to receive communications on their behalf, and as respects the persons concerned in the alleged combine it shall be sufficient for the registrar to communicate with the persons named in the order as the persons with whom the minister should communicate for this purpose.

When minister may select members.

(3) If the parties, or either of them, fail or neglect to make any recommendation within the said period, or such extension thereof as the minister, on cause shown, grants, the minister shall, as soon thereafter as possible, select and appoint a fit person or persons to be a member or members of the board.

Recommendation and appointment of a judge as third member.

(4) The two members so appointed may, within seven days after their appointment, recommend the name of a judge of any court of record in Canada who is willing and ready to act as a third member of the board, and the minister shall appoint such judge as a member of the board, and if they fail or neglect to make a recommendation within the said period, or such extension thereof as the minister on cause shown grants, the minister shall, as soon thereafter as possible, select and appoint a judge

of any court of record in Canada to be the third member of the board.

Chairman. (5) The third member of the board shall be its chairman.

Vacancies. (6) A vacancy in the membership of a board shall be filled in the same manner as an original appointment is made.

Persons disqualified as members. 13. No person shall act as a member of the board who is one of the applicants for the board or who has any direct pecuniary interest in the alleged combine that is the subject of investigation by such board, or who is not a British subject.

Notice of personnel of board. 14. As soon as possible after all the members of the board have been appointed by the minister the registrar shall notify the parties of the names of the chairman and other members of the board.

Oath of office. 15. Before entering upon the exercise of the functions of their office the members of the board shall take the following oath:

I, ———, do solemnly swear—

That I will truly, faithfully, and impartially perform my duties as a member of the board appointed to investigate ———.

That I am a British subject.

That I have no direct pecuniary interest in the alleged combine that is to be the subject of investigation.

That I have not received nor will I accept, either directly or indirectly, any perquisite, gift, fee, or gratuity from any person in any way interested in any matter or thing to be investigated by the board.

That I am not immediately connected in business with any of the parties applying for this investigation, and am not acting in collusion with any person herein.

Clerical assistance to board. 16. The department may provide the board with a stenographer and such clerical and other assistance as to the minister appears necessary for the efficient carrying

Disbursements. out of the provisions of this act. The department shall also repay any reasonable and proper disbursements made or authorized and certified by the judge who grants the order directing the investigation.

Commencement of investigation. 17. Upon the appointment of the board the registrar shall forward to the chairman copies of the application, statement, evidence, if any, taken before the judge, and order for investigation, and the board shall forthwith proceed to deal with the matters referred to therein.

INQUIRY AND REPORT.

Inquiry. 18. The board shall expeditiously, fully, and carefully inquire into the matters referred to it and all matters affecting the merits thereof, including the question of whether or not the price or rental of any article concerned has been unreasonably enhanced, or competition in the supply thereof unduly restricted, in consequence

of a combine, and shall make a full and detailed report thereon to the minister, which report shall set forth the various proceedings and steps taken by the board for the purpose of fully and carefully ascertaining all the facts and circumstances connected with the alleged combine, including such findings and recommendations as, in the opinion of the board, are in accordance with the merits and requirements of the case. Report to minister.

(2) In deciding any question that may affect the scope or extent of the investigation, the board shall consider what is required to make the investigation as thorough and complete as the public interest demands. Scope of investigation.

19. The board's report shall be in writing, and shall be signed by at least two of the members of the board. The report shall be transmitted by the chairman to the registrar, together with the evidence taken at such investigation certified by the chairman, and any documents and papers remaining in the custody of the board. A minority report may be made and transmitted to the registrar by any dissenting member of the board. Report of board.

20. Upon receipt of the board's report and of the minority report, if any, a copy thereof shall be sent free of charge to the parties and to the representative of any newspaper in Canada who applies therefor, and the report and minority report, if any, shall also be published without delay in the Canada Gazette. The minister may distribute copies of the report, and of any minority report, in such manner as to him seems most desirable, as a means of securing a compliance with the board's recommendations. The registrar shall, upon payment of such fees as may be prescribed, supply a certified copy of any report or minority report to any person applying for it. Publication of reports. Distribution of copies. Fee for certified copies.

21. Whenever, from or as a result of an investigation under the provisions of this act, or from or as a result of a judgment of the supreme court or exchequer court of Canada or of any superior court, or circuit, district, or county court in Canada, it appears to the satisfaction of the governor in council that with regard to any article there exists any combine to promote unduly the advantage of the manufacturers or dealers at the expense of the consumers, and if it appears to the governor in council that such disadvantage to the consumer is facilitated by the duties of customs imposed on the article, or on any like article, the governor in council may direct either that such article be admitted into Canada free of duty or that the duty thereon be reduced to such amount or rate as will, in the opinion of the governor in council, give the public the benefit of reasonable competition. Reduction of customs duties to secure reasonable competition.

22. In case the owner or holder of any patent issued under the patent act has made use of the exclusive rights and privileges which, as such owner or holder he controls, so as unduly to limit the facilities for transporting, producing, manufacturing, supplying, storing, or deal- Revocation of patent in certain cases.

ing in any article which may be a subject of trade or commerce, or so as to restrain or injure trade or commerce in relation to any such article, or unduly to prevent, limit, or lessen the manufacture or production of any article or unreasonably to enhance the price thereof, or unduly to prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation, storage, or supply of any article, such patent shall be liable to be revoked. And, if a board reports that a patent has been so made use of, the minister of justice may exhibit an information in the exchequer court of Canada praying for a judgment revoking such patent, and the court shall thereupon have jurisdiction to hear and decide the matter and to give judgment revoking the patent or otherwise as the evidence before the court may require.

Jurisdiction of exchequer court.

Combines restricting manufacture, trade, or competition.

23. Any person reported by a board to have been guilty of unduly limiting the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any article which may be a subject of trade or commerce; or of restraining or injuring trade or commerce in relation to any such article; or of unduly preventing, limiting, or lessening the manufacture or production of any such article; or of unreasonably enhancing the price thereof; or of unduly preventing or lessening competition in the production, manufacture, purchase, barter, sale, transportation, storage, or supply of any such article, and who thereafter continues so to offend, is guilty of an indictable offense and shall be liable to a penalty not exceeding $1,000 and costs for each day after the expiration of 10 days, or such further extension of time as in the opinion of the board may be necessary, from the date of the publication of the report of the board in the Canada Gazette during which such person so continues to offend.

Penalty.

SITTINGS OF BOARD.

Sittings of board.

24. The sittings of the board shall be held at such times and places as are fixed by the chairman, after consultation with the other members of the board, and the parties shall be notified by the chairman as to the times and places at which sittings are to be held; provided that, so far as practicable, the board shall sit in the locality within which the subject matter of the proceedings before it arose.

Proceedings.

25. The proceedings of the board shall be conducted in public, but the board may order that any portion of the proceedings shall be conducted in private.

Decisions.

26. The decision of any two of the members present at a sitting of the board shall be the decision of the board.

Quorum.

27. The presence of the chairman and at least one other member of the board shall be necessary to constitute a sitting of the board.

28. In case of the absence of any one member from a meeting of the board the other two members shall not proceed, unless it is shown that the absent member has been notified of the meeting in ample time to admit of his attendance. Absence of member.

29. Any party to an investigation may appear before the board in person or may be represented by any other person or persons, or, with the consent of the board, may be represented by counsel. Appearance of parties.

30. Whenever in the opinion of the minister the public interest so requires, the minister may apply to the minister of justice to instruct counsel to conduct the investigation before a board, and upon such application the minister of justice may instruct counsel accordingly. The fees and expenses allowed to such counsel by the minister of justice shall be paid out of such appropriations as are made by Parliament to provide for the cost of administering this act. When counsel appointed by minister.

31. If, in any proceedings before the board, any person willfully insults any member of the board, or willfully interrupts the proceedings, or without good cause refuses to give evidence, or is guilty in any other manner of any willful contempt in the face of the board, any officer of the board, or any constable may take the person offending into custody and remove him from the precincts of the board, to be detained in custody until the conclusion of that day's sitting of the board, and the person so offending shall be liable, upon summary conviction, to a penalty not exceeding $100. Contempt of board. Penalty.

WITNESSES AND EVIDENCE.

32. For the purposes of an investigation the board shall have all powers which are vested in any court of record in civil cases for the following purposes, namely: The summoning of witnesses before it, and enforcing their attendance from any part of Canada, of administering oaths, and of requiring witnesses to give evidence on oath or on solemn affirmation (if they are persons entitled to affirm in civil matters), and to produce such books, papers, or other documents or things as the board deems requisite to the full investigation of the matters into which it is inquiring. Witnesses and evidence.

(2) Any member of the board may administer an oath. Oath.

(3) Summonses to witnesses and all other orders, process, and proceedings shall be signed by the chairman. Signature of chairman.

33. All books, papers, and other documents or things produced before the board, whether voluntarily or in pursuance of summons, may be inspected by the board, and also by such parties as the board allows. Inspection of documents.

34. Any party to the proceedings shall be competent and may be compelled to give evidence as a witness. Parties as witnesses.

35. Every person who is summoned and duly attends as a witness shall be entitled to an allowance for attend- Expenses of witnesses.

ance and traveling expenses according to the scale in force with respect to witnesses in civil suits in the superior courts of the Province in which the inquiry is being conducted.

Failure of witness to attend or to produce documents.

36. If any person who has been duly served with a summons and to whom at the time of service payment or tender has been made of his reasonable traveling expenses according to the aforesaid scale, fails to attend or to produce any book, paper, or other document or thing as required by his summons, he shall, unless he shows that there was good and sufficient cause for such failure, be guilty of an offense and liable upon summary conviction to a penalty not exceeding $100.

Penalty.

Experts.

37. The board may, with the consent of the minister, employ competent experts to examine books or official reports, and to advise it upon any technical or other matter material to the investigation, but the information obtained therefrom shall not, except in so far as the board deems it expedient, be made public, and such parts of the books, papers, or other documents as in the opinion of the board are not material to the investigation may be sealed up.

REMUNERATION AND EXPENSES OF BOARD.

Remuneration of board.

38. The members of a board shall be remunerated for their services as follows:

(*a*) To the two members first appointed an allowance of $5 each per day for a time not exceeding three days, during which they may be actually engaged in selecting the third member of the board.

(*b*) To each member an allowance at the rate of $20 for each day's sitting of the board.

Traveling expenses.

39. Each member of the board shall be entitled to his actual and necessary traveling expenses and an allowance of $10 per day for each day that he is engaged in traveling from or to his place of residence for the purpose of attending or after having attended a meeting of the board.

Acceptance of gratuity prohibited.

40. No member of the board shall accept, in addition to his traveling expenses and allowances as a member of the board, any perquisite, gift, fee, or gratuity of any kind from any person in any way interested in any matter or thing that is being investigated by the board. The acceptance of any such perquisite, gift, fee, or gratuity by any member of the board shall be an offense, and shall render such member liable upon summary conviction to a fine not exceeding $1,000, and he shall thereafter be disqualified to act as a member of any board.

Penalty.

Vouchers for expenses.

41. All expenses of the board, including expenses for transportation incurred by the members thereof or by persons under its order in making investigations under this act, salaries of employees and agents, and fees and traveling expenses of witnesses, shall be allowed and

paid upon the presentation of itemized vouchers therefor, approved and certified by the chairman of the board, which vouchers shall be forwarded by the chairman to the registrar. The chairman shall also forward to the registrar a certified and detailed statement of the sittings of the board and of the members present at each of such sittings.

Detailed statement of sittings.

MISCELLANEOUS.

42. No proceedings under this act shall be deemed invalid by reason of any defect of form or any technical irregularity.

Technical irregularities.

43. Evidence of a report of a board may be given in any court by the production of a copy of the Canada Gazette purporting to contain a copy of such report, or by the production of a copy of the report purporting to be certified by the registrar to be a true copy.

Evidence of report.

44. The minister shall determine the allowance or amounts to be paid to all persons, other than the members of a board employed by the Government, or any board, including the secretaries, clerks, experts, stenographers, or other persons performing any services under the provisions of this act.

Allowances determined by minister.

45. The governor in council may make such regulations, not inconsistent with this act, as to him seem necessary for carrying out the provisions of this act and for the efficient administration thereof.

Regulations by governor in council.

(2) Such regulations shall be published in the Canada Gazette, and upon being so published they shall have the same force as if they formed part of this act.

Publication.

(3) The regulations shall be laid before both Houses of Parliament within 15 days after such publication if Parliament is then sitting, and if Parliament is not then sitting then within 15 days after the opening of the next session thereof.

To be laid before Parliament.

46. The minister shall lay before Parliament, within the first 15 days of the then next session, an annual report of the proceedings under this act.

Annual report to Parliament.

47. Subsection 1 of section 12 of the customs tariff, 1907, is repealed.

1907, c. 11, amended.

48. This act shall not be construed to repeal, amend, or in any way affect the trade-unions act, chapter 125 of the Revised Statutes, 1906.

R. S., c. 125.

SCHEDULE.

[Form 1.]

APPLICATION FOR ORDER DIRECTING AN INVESTIGATION.

[The combines investigation act, sec. 5.]

Dated at ———, this —— day of ———, 19—.

In the matter of an alleged combine (here state shortly the nature of the combine).

To the honorable (here insert the name of the judge), a judge (or chief justice as the case may be) of the (here insert the title of the court).

The undersigned are of opinion that a combine exists (here state shortly the nature of the alleged combine) and that prices have been enhanced (or competition has been restricted by such combine, as the case may be) to the detriment of consumers (or producers, as the case may be).

The undersigned therefore apply for an order under "the combines investigation act" directing an investigation into such alleged combine.

(Here state—(*a*) the nature of the alleged combine and the persons believed to be concerned therein; and, (*b*) the manner in which the alleged combine affects prices or restricts competition, and the extent to which the alleged combine is believed to operate to the detriment of consumers or producers, as the case may be.)

STATEMENT ACCOMPANYING APPLICATION FOR ORDER.

Dated at ——— this —— day of ———, 19—.

The undersigned hereby authorize ——— of (give name and place of residence) to act as our representative for the purpose of "the combines investigation act," and to receive communications and conduct negotiations on our behalf.

The names and addresses of the persons applying for the aforesaid order are as follows:

Names.	Addresses.

STATUTORY DECLARATION ACCOMPANYING APPLICATION FOR ORDER.[1]

CANADA:

Province of _____, *to wit:*

I, _____, of the _____ of _____ in the _____ of _____ do solemnly declare:

1. That the alleged combine operates to my detriment as a consumer (or producer, as the case may be).

2. That to the best of my knowledge and belief the combine alleged in the foregoing statement exists, and that such combine is injurious to trade (or has operated to the detriment of consumers or producers, as the case may be) in the manner and to the extent described.

3. That it is in the public interest that an investigation should be had into such combine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada evidence act.

Declared before me at _____, in the county of _____, this ____ day of _____, 19__.

[Form 2.]

ORDER DIRECTING INVESTIGATION.

[The combines investigation act, sec. 7.]

In the matter of the application of (here insert the names of applicants), dated the ____ day of _____, 19__, for an order directing an investigation under "the combines investigation act" into an alleged combine (here state shortly the nature of the combine).

[1] A declaration as above must be made by each applicant.

I, the honorable ------, a judge (or chief justice, as the case may be) of (here insert the name of court), after having read the application of (names of applicants), dated the ---- day of ------, 19--, the statement and statutory declarations accompanying the same, and the evidence produced by the said applicants, am satisfied that there is reasonable ground for believing that a combine exists (here describe nature of combine), which is injurious to trade (or which has operated to the detriment of consumers or producers, as the case may be), and that it is in the public interest that an investigation should be held, under the provisions of the said act, into the following matters, that is to say: (Here set out the matters to be investigated.)

The names of the persons alleged to be concerned in the alleged combine are (here insert names and addresses), and I am of opinion that the minister of labor should communicate with (here insert the name or names with, in each case, the address), in order to obtain the recommendation for the appointment of a person as a member of the board of investigation on behalf of those concerned in the said alleged combine.

Dated at ------, this ---- day of ------, 19--.

NEW ZEALAND.

ACTS FOR THE REPRESSION OF MONOPOLIES IN TRADE OR COMMERCE.

[New Zealand Statutes, 1, Geo. V, 1910, No. 32.]

Title. [Nov. 21, 1810.]

AN ACT For the repression of monopolies in trade or commerce.

Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

Short title and commencement.

1. This act may be cited as the "commercial trusts act, 1910," and shall come into operation on the 1st day of January, 1911.

Interpretation.

2. (1) In this act, unless the contrary intention appears, "commercial trust" means any association or combination (whether incorporated or not) of any number of persons, established either before or after the commencement of this act, and either in New Zealand or elsewhere, and (*a*) having as its object, or as one of its objects, that of (1) controlling, determining, or influencing the supply or demand or price of any goods in New Zealand or any part thereof or elsewhere, or that of (2) creating or maintaining in New Zealand or any part thereof or elsewhere a monopoly, whether complete or partial, in the supply or demand of any goods; or (*b*) acting in New Zealand or elsewhere with any such object as aforesaid; and includes any firm or incorporated company having any such object, or acting as aforesaid.

"Association" includes the union of any number of persons by or under any agreement or trust, whether temporary or permanent, and whether legally valid or not, and whether including any scheme of organization or common management or control or not.

"Member of a commercial trust" means any of the constituent persons of that trust, or any agent of that trust, and, where any such constituent person or agent is a corporation, firm, or association, includes every member or agent of that corporation, firm, or association.

"Person" includes a corporation, and as used in the foregoing definitions of "commercial trust," "association," and "member of a commercial trust" includes also a firm of partners or any other association or combination of persons.

Application of act.

(2) Nothing in this act shall apply to any goods other than those specified in the schedule hereto.

Illegal concessions in consideration of exclusive dealing.

3. Every person commits an offense who, either as principal or agent, in respect of dealings in any goods, gives, offers, or agrees to give to any other person any re-

bate, refund, discount, concession, allowance, reward, or other valuable consideration for the reason or upon the express or implied condition that the latter person—

(*a*) Deals or has dealt or will deal, or intends or undertakes or has undertaken or will undertake to deal, exclusively or principally, or to such an extent as amounts to exclusive or principal dealing, with any person or class of persons, either in relation to any particular goods or generally; or

(*b*) Does not deal or has not dealt or will not deal, or intends or undertakes or has undertaken or will undertake not to deal, with any person or class of persons, either in relation to any particular goods or generally; or

(*c*) Restricts or has restricted or will restrict, or intends or undertakes or has undertaken or will undertake to restrict, his dealing with any person or class of persons, either in relation to any particular goods or generally; or

(*d*) Is or becomes or has been, or has undertaken or will undertake to become, a member of a commercial trust; or

(*e*) Acts or has acted or will act, or intends or undertakes or has undertaken or will undertake to act, in obedience to or in conformity with the determinations, directions, suggestions, or requests of any commercial trust with respect to the sale, purchase, or supply of any goods.

Illegal refusals to deal.

4. Every person commits an offense who, either as principal or agent, refuses, either absolutely or except upon disadvantageous or relatively disadvantageous conditions, to sell or supply to any other person, or to purchase from any other person, any goods for the reason that the latter person—

(*a*) Deals or has dealt or will deal, or intends to deal, or has not undertaken or will not undertake not to deal, with any person or class of persons, either in relation to any particular goods or generally; or

(*b*) Is not or has not been, or will not become or undertake to become or has not undertaken to become, a member of a commercial trust; or

(*c*) Does not act or has not acted or will not act, or does not intend to act, or has not undertaken or will not undertake to act, in obedience to or in conformity with the determinations, directions, suggestions, or requests of any commercial trust with respect to the sale, purchase, or supply of any goods.

Illegal monopolies.

5. Any person who conspires with any other person to monopolize wholly or partially the demand or supply in New Zealand or any part thereof of any goods, or to control wholly or partially the demand or supply or price in New Zealand or any part thereof of any goods, is guilty of an offense if such monopoly or control is of such a nature as to be contrary to the public interest.

Sales at prices fixed by a commercial trust.

6. (1) Every person commits an offense who, either as principal or agent, sells or supplies, or offers for sale or supply, any goods at a price which is unreasonably high, if that price has been in any manner directly or indirectly determined, controlled, or influenced by any commercial trust of which that person or his principal (if any) is or has been a member.

(2) Every person commits an offense who, in obedience to or in consequence of or in conformity with any determination, direction, suggestion, or request of any commercial trust, whether he is a member of that trust or not, sells or supplies, or offers for sale or supply, any goods, whether as principal or agent, at a price which is unreasonably high.

Sales by a commercial trust.

7. (1) If any commercial trust, whether as principal or agent, sells or supplies, or offers for sale or supply, any goods at a price which is unreasonably high, every person who is then a member of that trust shall be deemed to have committed an offense against this act.

(2) If in any such case the commercial trust is a corporation, it shall itself be guilty of an offense against this act; but the liability of the trust shall not exclude or affect the liability of its members under the last preceding subsection.

When prices are to be deemed unreasonably high.

8. For the purposes of this act the price of any goods shall be deemed to be unreasonably high if it produces or is calculated to produce more than a fair and reasonable rate of commercial profit to the person selling or supplying, or offering to sell or supply, those goods, or to his principal, or to any commercial trust of which that person or his principal is a member, or to any member of any such commercial trust.

Aiding and abetting offenses against this act.

9. Every person who aids, abets, counsels, or procures, or is in any way knowingly concerned in the commission of, an offense against this act, or the doing of any act outside New Zealand which would if done in New Zealand be an offense against this act, shall be deemed to have committed that offense.

Penalty.

10. (1) Every person who commits an offense against this act shall be liable to a penalty of £500.

(2) If two or more persons are responsible for the same offense against this act, each of those persons shall be severally liable to a penalty of £500, and the liability of each of them shall be independent of the liability of the others.

Penalties recoverable by action in the supreme court.

11. Every such penalty shall constitute a debt due by the offender to His Majesty the King, and shall be recoverable, together with costs of suit, by a civil action in the supreme court, instituted by the attorney general for and in the name of His Majesty.

Supreme court may reduce penalty.

12. In any such action the supreme court may remit such part of the aforesaid penalty of £500 as it thinks fit, and may give judgment for the residue of the penalty only.

13. In any such action the supreme court may, in addition to the said penalty, grant an injunction against the continuance or repetition of the offense; but no such injunction shall be granted by way of interlocutory proceedings before final judgment in the action. Injunction against repetition or continuance of offenses.

14. (1) In any such action claims may be joined for the recovery of penalties in respect of several offenses, whether of the same or different kinds. Joinder of parties, and causes of action.

(2) In any such action several persons may be joined as defendants, whether in respect of the same or of different offenses, and whether those offenses are committed by the same or by different parties; and in any such case separate judgments may be given in respect of each defendant so joined.

(3) In the case of any such joinder of causes of action or of parties the supreme court may give such directions as it thinks fit for the separate trial of any cause of action against any defendant.

15. (1) In any action for the recovery of a penalty or for an injunction under this act the supreme court may, in proof of any fact in issue, admit and accept as sufficient such evidence as it thinks fit, whether such evidence is legally admissible in other proceedings or not. Evidence.

(2) In any action for the recovery of a penalty or for an injunction under this act, no person, whether a party to the action or not, shall be excused from answering any question put to him by interrogatory or otherwise, or from producing or making discovery of any document, on the ground that the answer to the question or the production or discovery of the document would tend to criminate him in respect of any offense against this act.

SCHEDULE. Schedule.

GOODS TO WHICH THIS ACT APPLIES.

Agricultural implements.
Coal.
Meat.
Fish.
Flour, oatmeal, and the other products or by-products of the milling of wheat or oats.
Petroleum or other mineral oil (including kerosene, naphtha, and the other products or by-products of any such oil).
Sugar.
Tobacco (including cigars and cigarettes).

PATENTS, DESIGNS, AND TRADE-MARKS.

[1908, No. 140.]

AN ACT To consolidate certain enactments of the general assembly relating to patents for inventions and registration of designs and of trade-marks.

COMPULSORY LICENSES.

28. If on the petition of any person interested it is proved to the governor that by reason of the default of a patentee to grant licenses on reasonable terms (*a*) Power for governor to order grant of licenses. (Ibid., sec. 33.)

the patent is not being worked in New Zealand; or (*b*) the reasonable requirements of the public with respect to the invention can not be supplied; or (*c*) any person is prevented from working or using to the best advantage an invention of which he is possessed, the governor may order the patentee to grant licenses on such terms as to the amount of royalties, security for payment, or otherwise, as the governor, having regard to the nature of the invention and the circumstances of the case, deems just, and any such order may be enforced by mandamus.

(New Zealand Consolidation Statutes, Vol. IV, Appendix D, act 140, sec. 28.)

MONOPOLY PREVENTION ACT.

[1908, No. 122.]

AN ACT To consolidate certain enactments of the general assembly relating to the prevention of certain monopolies.

Be it enacted by the general assembly of New Zealand in parliament assembled, and by the authority of the same, as follows:

Short title.

1. (1) The short title of this act is "The monopoly prevention act, 1908."

Enactments consolidated.

(2) This act is a consolidation of the enactments mentioned in the first schedule hereto, and with respect to those enactments the following provisions shall apply:

Savings.

(*a*) All appointments, regulations, orders in council, orders, reports, recommendations, instruments, and generally all acts of authority which originated under any of the said enactments, and are subsisting or in force on the coming into operation of this act, shall enure for the purposes of this act as fully and effectually as if they had originated under the corresponding provisions of this act, and accordingly shall where necessary be deemed to have so originated.

(*b*) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this act, may be continued, completed, and enforced under this act.

(3) This act is divided into parts, as follows:

Part I. Agricultural implements. (Secs. 2 to 13.)

Part II. Flour and other products. (Secs. 14 to 24.)

PART I.—*Agricultural implements.*

Interpretation. (1905, No. 58, sec. 2.)

2. In this part of this act, if not inconsistent with the context, "implements" means the implements, machines, and appliances specified in the second schedule hereto; "minister" means the minister of customs.

Standard list to be compiled. (Ibid., sec. 3.)

3. (1) The minister shall cause to be compiled a statement showing in the case of each implement its descrip-

tion, the nature and quality of the materials used in its construction, and the price then current.

(2) Such statement shall be published in the Gazette.

Complaint of unfair competition. (Ibid., sec. 4.)

4. On complaint to the minister by any two or more manufacturers in New Zealand of any implement that the price of any implement on importation into New Zealand has been materially reduced, and that competition on unfair lines is being carried on by importers of implements from foreign countries, he shall summon the board hereinafter constituted and refer the matter of such complaint to it for report.

Board constituted. (Ibid., sec. 5.)

5. (1) There is hereby constituted a board called "The agricultural implement inquiry board," consisting of—

The judge of the court of arbitration, who shall be chairman:

The president for the time being of the Farmers' Union;

The president of the Industrial Association of Canterbury;

Some person appointed by the governor on the recommendation of the trades and labor councils; and

Some person appointed by the governor on the recommendation of the agricultural and pastoral associations.

(2) The members of the board appointed by the governor shall be appointed in the same manner as members of the court of arbitration (other than the judge) are appointed.

(3) The board and its members as constituted under "The agricultural-implement manufacture, importation, and sale act, 1905," and subsisting on the coming into operation of this act, shall be deemed to be the board and its members under this act.

Inquiry by board. (Ibid., sec. 6; 1907, No. 30, sec. 4.)

6. (1) The board on being summoned by the minister shall inquire with as little delay as possible into the matter referred to it in such manner as it thinks fit, and for the purposes of such inquiry shall have and may exercise all the powers that the court of arbitration has in respect of industrial disputes.

(2) The board may exercise its powers and functions at any meeting at which the judge of the court of arbitration and at least three other members of the board are present.

(3) The board shall report in writing to the minister the result of its inquiry, and shall state whether or not in its opinion the price of any implement imported into New Zealand has been materially reduced below that specified in the statement mentioned in section 3 hereof, and may recommend that relief be granted in the manner hereinafter appearing.

Duty may be imposed if New Zealand manufacturers reduce prices. (1905, No. 58, sec. 7.)

7. (1) If at any time the manufacturers of implements in New Zealand agree to reduce the price of the whole of the implements mentioned in the second schedule hereto, or not less than a moiety thereof, to at least 20 per cent below that specified in the statement

mentioned in section 3 hereof, and notify the minister of such agreement, he shall summon the board and refer the matter to it for report.

(2) The board shall in like manner make inquiry into the matter, and report in writing to the minister whether or not in its opinion it is advisable for the protection of the industry in New Zealand that relief be granted as hereinafter mentioned.

Power to grant bonus. (1905, No. 58, sec. 8.)

8. (1) In any case where the board recommends that relief be granted it shall be lawful for the minister to grant to the manufacturers of implements in New Zealand such bonus, not exceeding 33 per cent, as he deems necessary to enable manufacturers to compete with importers of such implements.

(2) The right to such bonus shall be subject to such terms and conditions as the governor in council thinks fit to impose.

Implements manufactured in United Kingdom. (Ibid., sec. 9; 1907, No. 30, sec. 3.)

9. For the purposes of this act implements manufactured in the United Kingdom shall be deemed to be manufactured in New Zealand, and the importers of such implements shall be deemed to be manufacturers thereof in New Zealand.

Power to refund duty on certain materials. (1905, No. 58, sec. 10.)

10. (1) Whenever it is proved to the satisfaction of the collector that duty-paid materials have been used in the construction of any implement, he shall refund to the manufacturer of such implement the amount of duty paid on the materials so used.

(2) For the purposes of this section "materials" includes such parts of implements as can not advantageously be manufactured in New Zealand.

Report of board to be presented to Parliamemnt. (1907, No. 30, sec. 5.)

11. Every report of the board shall be laid before Parliament within 10 days after its presentation to the minister of customs if Parliament is then sitting, and if not, then within 10 days after the commencement of the next ensuing session.

Act incorporated. (1905, No. 58, sec. 11; regulations, ibid., sec. 12.)

12. (1) This part of this act shall be deemed to be incorporated with "the customs law act, 1908."

(2) The governor may from time to time, by order in council gazetted, make regulations necessary for the carrying out of this part of this act.

Duration of this part of act. (1906, No. 21, sec. 2; 1907, No. 30, sec. 2.)

13. This part of this act shall continue in operation till the 31st day of December, 1908, on which day it shall be deemed to be repealed.

PART II.—*Flour and other products.*

Interpretation. (1907, No. 34, sec. 2.)

14. In this part of this act "the court" means the court of arbitration under "The industrial concilliation and arbitration act, 1908."

Flour may be exempted from customs duty. (Ibid., sec. 3.)

15. Notwithstanding anything in "The customs duties act, 1908," it shall be lawful for the governor, at any time and from time to time, on the recommendation of the court, made in accordance with this part of this act,

to declare, by order in council gazetted, that on and after a date to be specified in such order in council flour imported into New Zealand shall be admitted free of all duties of customs, and so long as any such order in council remains in force flour shall be exempt from such duties accordingly.

Order in council remitting duty may be revoked. (Ibid., sec. 4.)

16. Any such order in council may be revoked by the governor at any time as from a day to be specified in the order in council revoking the same, not being earlier than three months from the gazetting of the last-mentioned order in council.

Court may inquire as to price of flour. (1907, No. 34, sec. 5.)

17. The court may from time to time, at the direction of the governor, make an inquiry as to whether the wholesale market price of flour in New Zealand is unreasonably high, and if on such inquiry the court finds that such price is, or has at any time since the receipt of such direction from the governor been, unreasonably high, the court shall recommend the governor to exercise the powers conferred on him by section 15 hereof.

Unreasonable price of flour. (Ibid., sec. 6.)

18. For the purposes of such inquiry the price of flour shall be deemed to be unreasonably high—

(*a*) If the average price of flour in New Zealand is, relatively to the price of wheat in New Zealand, higher than the average price of flour in Australia relatively to the average price of wheat in Australia, unless in the opinion of the court the additional price in New Zealand is justified by additional cost of production; or

(*b*) If the average price of wheat in New Zealand has, by reason of any combination among the holders of stocks of wheat, or by reason of any complete or partial monopoly established by any such holder, been raised above the price which would be determined by unrestricted competition.

Secs. 15 to 17 to apply to wheat. (Ibid., sec. 7.)

19. (1) The provisions of sections 15 to 17 hereof shall also apply to wheat in the same manner as to flour.

(2) For the purpose of any inquiry by the court under the authority of this part of this act the price of wheat shall be deemed to be unreasonably high if the average wholesale price in New Zealand has, by reason of any combination among the holders of stocks, or by reason of any complete or partial monopoly established by any such holder, been raised above the price which would be determined by unrestricted competition.

Secs. 15 to 17 to apply to potatoes. (Ibid., sec. 8.)

20. (1) The provisions of sections 15 to 17 hereof shall also apply to potatoes in the same manner as to flour.

(2) For the purpose on any inquiry by the court under the authority of this part of this act the price of potatoes shall be deemed to be unreasonably high—

(*a*) If the average wholesale price in New Zealand exceeds 7 pounds per ton; or

(*b*) If the average wholesale price in New Zealand has, by reason of any combination among the holders of stocks of potatoes, or by reason of any complete or partial

monopoly established by any such holder, been raised above the price which would be determined by unrestricted competition.

How average price determined. (Ibid., sec. 9.)

21. (1) The average price in New Zealand of any of the aforesaid articles shall be determined by the court for the purposes of this part of this act, by reference to the ordinary market price for the time being in Invercargill, Dunedin, Oamaru, Timaru, Christchurch, Wellington, and Auckland.

(2) The average price in Australia of any of the aforesaid articles shall be likewise determined by reference to the ordinary market price for the time being in Adelaide, Sydney, and Melbourne.

Court to have powers of commission. (Ibid., sec. 10.)

22. (1) In making any inquiry under the authority of this part of this act, the court shall be deemed to be a commission within "the commissions of inquiry act, 1908," and shall have all the powers conferred upon commissioners by that act, and shall be subject to all the provisions of that act accordingly.

(2) In making any such inquiry the court may receive and act on any evidence which it thinks fit, whether the same is legally admissible in a court of law or not.

Representatives of agricultural and pastoral societies to be a member of the court. (1907, No. 34, sec. 11.)

23. (1) For the purposes of this part of this act there shall be added to the court one additional member thereof, to be appointed by the governor from time to time in the case of any inquiry under this part of this act, on the recommendation of a majority of the societies incorporated under "the agricultural and pastoral societies act, 1908."

(2) The member so appointed shall be deemed to be a member of the court for the purpose of the inquiry in respect of which he was so appointed, but for no other purpose whatsoever.

(3) The recommendation of the said societies shall be made in such manner as is prescribed by regulations made by the governor in council.

(4) If the said societies fail to make any recommendation in accordance with such regulations, the governor may appoint as such additional member of the court any person whom he thinks fit.

(5) The additional member (if any) appointed under "the flour and other products monopoly prevention act, 1907," and in office on the coming into operation of this act, shall be deemed to be the additional member under this act.

Quorum. (Ibid., sec. 12.)

24. (1) In the case of any inquiry under this part of this act the court may exercise its powers and functions at any sitting thereof at which there are present three members, including the judge of the court.

(2) In the case of any division of opinion, if the members of the court who are present are equally divided in opinion, the decision of the judge shall be deemed to be the decision of the court.

FIRST SCHEDULE.

ENACTMENTS CONSOLIDATED.

1905, No. 58. The agricultural-implement manufacture, importation, and sale act, 1905.
1906, No. 21. The agricultural-implement manufacture, importation, and sale act, extension act, 1906.
1907, No. 30. The agricultural-implement manufacture, importation, and sale act, 1907.
1907, No. 34. The flour and other products monopoly prevention act, 1907.

SECOND SCHEDULE. Secs. 2, 7, 1905, No. 58, schedule.

IMPLEMENTS TO WHICH PART I OF THIS ACT RELATES.

Plows of all kinds over 1½ hundredweight.
Tine harrows.
Disk harrows.
Drills, combined grain, seed, and manure, 10 coulters and over.
Drills, combined grain, seed, and manure, 10 coulters.
Drills, grain.
Rollers, land and Cambridge, over 7 hundredweight.
Cultivators and grubbers, over 2 hundredweight.
Chaff cutters, 9-inch mouth and over.
Self-bagging chaff cutters.
Seed cleaners.
(New Zealand Consolidated Statutes, Appendix D, Vol. IV, pp. 283 to 287.)

[1908, No. 236.]

AN ACT To amend the monopoly prevention act, 1908. Title.

[Oct. 10, 1908.]

Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited as the monopoly prevention amendment act, 1908. Short title.

2. (1) Part I of the monopoly prevention act, 1908, shall continue in operation until the 31st day of December, 1910, on which day it shall be deemed to be repealed. Operation of act extended.

(2) Section 13 of the monopoly prevention act, 1908, is hereby repealed. Repeal.

(New Zealand Statutes, 1908, No. 236, p. 110.)

[1907, No. 34.]

AN ACT To prevent the establishment of monopolies in the sale of flour and other products. Title.

[Nov. 19, 1907.]

Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited as the "flour and other products monopoly prevention act, 1907." Short title.

Interpretation.

2. In this act "the court" means the court of arbitration under the industrial conciliation and arbitration act, 1905.

Flour may be exempted from customs duty.

3. Notwithstanding anything contained in the tariff act, 1907, it shall be lawful for the governor, at any time and from time to time, on the recommendation of the court made in accordance with this act, to declare, by order in council gazetted, that on and after a date to be specified in such order in council flour imported into New Zealand shall be admitted free of all duties of customs, and so long as any such order in council remains in force flour shall be exempt from such duties accordingly.

Order in council remitting duty may be revoked.

4. Any such order in council may be revoked by the governor at any time as from a day to be specified in the order in council revoking the same, not being earlier than three months from the gazetting of the last-mentioned order in council.

Court may inquire as to price of flour.

5. The court may from time to time, at the direction of the governor, make an inquiry as to whether the wholesale market price of flour in New Zealand is unreasonably high; and if on such inquiry the said court finds that such price is, or has at any time since the receipt of such direction from the governor been, unreasonably high, the said court shall recommend the governor to exercise the powers conferred upon him by section 3 of this act.

Unreasonable price of flour.

6. For the purposes of such inquiry the price of flour shall be deemed to be unreasonably high—

(*a*) If the average price of flour in New Zealand is, relatively to the price of wheat in New Zealand, higher than the average price of flour in Australia relatively to the average price of wheat in Australia, unless in the opinion of the court the additional price in New Zealand is justified by additional cost of production; or

(*b*) If the average price of wheat in New Zealand has, by reason of any combination among the holders of stocks of wheat, or by reason of any complete or partial monopoly established by any such holder, been raised above the price which would be determined by unrestricted competition.

Act to apply also to wheat.

7. (1) The provisions of sections 3, 4, and 5 of this act shall also apply to wheat in the same manner as to flour.

(2) For the purpose of any inquiry by the court under the authority of this act, the price of wheat shall be deemed to be unreasonably high if the average wholesale price in New Zealand has, by reason of any combination among the holders of stocks or by reason of any complete or partial monopoly established by any such holder, been raised above the price which would be determined by unrestricted competition.

Act to apply also to potatoes.

8. (1) The provisions of sections 3, 4, and 5 of this act shall also apply to potatoes in the same manner as to flour.

(2) For the purpose of any inquiry by the court under the authority of this act, the price of potatoes shall be deemed to be unreasonably high—

(*a*) If the average wholesale price in New Zealand exceeds £7 per ton; or

(*b*) If the average wholesale price in New Zealand has, by reason of any combination among the holders of stocks of potatoes or by reason of any complete or partial monopoly established by any such holder, been raised above the price which would be determined by unrestricted competition.

How average price determined.

9. The average price in New Zealand of any of the aforesaid articles shall be determined by the said court for the purposes of this act by reference to the ordinary market price for the time being in Invercargill, Dunedin, Timaru, Oamaru, Christchurch, Wellington, and Auckland. The average price in Australia of any of the aforesaid articles shall be likewise determined by reference to the ordinary market price for the time being in Adelaide, Sydney, and Melbourne.

Court to have powers of commission.

10. (1) In making any inquiry under the authority of this act, the court shall be deemed to be a commission within the commissioners act, 1903, and shall have all the powers conferred upon commissioners by that act, and shall be subject to all the provisions of that act accordingly.

(2) In making any such inquiry the said court may receive and act on any evidence which it thinks fit, whether the same is legally admissible in a court of law or not.

Representative of agricultural and pastoral societies to be a member of the court.

11. (1) For the purposes of this act there shall be added to the court one additional member thereof, to be appointed by the governor from time to time in the case of any inquiry under this act, on the recommendation of a majority of the societies incorporated under the agricultural and pastoral societies act, 1877.

(2) The member so appointed shall be deemed to be a member of the said court for the purpose of the inquiry in respect of which he was so appointed, but for no other purpose whatsoever.

(3) The recommendation of the said societies shall be made in such manner as is prescribed by regulations made by the governor in council.

(4) If the said societies fail to make any recommendation in accordance with such regulations, the governor may appoint as such additional member of the said court any person whom he thinks fit.

Quorum.

12. (1) In the case of any inquiry under this act the court may exercise its powers and functions at any sitting thereof at which there are present three members, including the judge of the said court.

(2) In the case of any division of opinion, if the members of the said court who are present are equally divided

in opinion, the decision of the said judge shall be deemed to be the decision of the court.

(New Zealand Statutes, 7 Edw. VII, 1907, pp. 137 to 139.)

[1907, No. 30.]

Title. AN ACT To amend the agricultural-implement manufacture, importation, and sale act, 1905, and to continue the operation thereof.

[Nov. 13, 1907.]

Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

Short title. 1. This act may be cited as the "agricultural-implement manufacture, importation, and sale act, 1907."

Act of 1906 extended. 2. Section 2 of the agricultural-implement manufacture, importation, and sale act extension act, 1906, is hereby amended by omitting the word "seven" and substituting the word "eight."

Sec. 9 of act of 1905 amended. 3. Section 9 of the agricultural-implement manufacture, importation, and sale act, 1905, is hereby amended by omitting the words "of British manufacture," and substituting the words "manufactured in the United Kingdom."

Quorum of agricultural implement inquiry board. 4. The board constituted by the last-mentioned act may exercise its powers and functions at any meeting at which the judge of the court of arbitration and at least three other members of the board are present.

Report of board to be presented to Parliament. 5. The report of the board shall be laid before Parliament within ten days after its presentation to the minister of customs if Parliament is then sitting, and if not, then within ten days after the commencement of the next ensuing session.

(New Zealand Statutes, 7 Edw. VII, 1907, p. 129.)

[1906, No. 21.]

Title. AN ACT To revive "the agricultural implement manufacture, importation, and sale act, 1905."

[Oct. 23, 1906.]

Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

Short title. 1. The short title of this act is "The agricultural implement manufacture, importation, and sale act extension act, 1906."

Continuation of act. 2. (1) The agricultural implement manufacture, importation, and sale act, 1905, shall continue in operation and be deemed to have continued in operation as if sec-

tion 13 thereof had not been passed until the 31st day of December, 1907.

(2) The said section 13 is hereby repealed. Repeal.

(New Zealand Statutes, 1906, No. 21, p. 71.)

[1905, No. 58.]

AN ACT To regulate and control the manufacture and sale of certain agricultural implements within New Zealand and the importation of the same implements from foreign countries. Title.

[Oct. 31, 1905.]

Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. The short title of this act is "The agricultural implement manufacture, importation, and sale act, 1905." Short title.

2. In this act, if not inconsistent with the context, "commissioner" means the commissioner of trade and customs; "implements" means the implements, machines, and appliances specified in the schedule hereto. Interpretation.

3. (1) As soon as practicable after the passing of this act the commissioner shall cause to be compiled a statement showing in the case of each implement its description, the nature and quality of the materials used in its construction, and the price current on the passing of this act. Standard list to be compiled.

(2) Such statement shall be published in the Gazette.

4. On complaint to the commissioner by any two or more manufacturers in New Zealand of any implement that the price of any implement on importation into New Zealand has been materially reduced, and that competition on unfair lines is being carried on by importers of implements from foreign countries, he shall summon the board hereinafter constituted and refer the matter of such complaint to it for report. Complaint of unfair competition.

5 (1) There is hereby constituted a board called "The agricultural implement inquiry board," consisting of— Board constituted.

The president of the arbitration court, who shall be chairman;

The president for the time being of the Farmers' Union;

The president of the Industrial Association of Canterbury;

Some person appointed by the governor on the recommendation of the trades and labor councils; and

Some person appointed by the governor on the recommendation of the agricultural and pastoral associations.

(2) The members of the board appointed by the governor shall be appointed in the same manner as members of the arbitration court (other than the president) are appointed.

Inquiry by board.

6. (1) The board on being summoned by the commissioner shall inquire with as little delay as possible into the matter referred to it in such manner as it thinks fit, and for the purposes of such inquiry shall have and may exercise all the powers that the arbitration court has in respect of industrial disputes.

(2) The board shall report in writing to the commissioner the result of its inquiry, and shall state whether or not in its opinion the price of any implement imported into New Zealand has been materially reduced below that specified in the statement mentioned in section 3 hereof, and may recommend that relief be granted in the manner hereinafter appearing.

Duty may be imposed if New Zealand manufacturers reduce prices.

7. (1) If at any time after the passing of this act the manufacturers of implements in New Zealand agree to reduce the price of the whole of the implements mentioned in the schedule hereto, or not less than a moiety thereof, to at least 20 per cent below that specified in the statement mentioned in section 3 hereof, and notify the commissioner of such agreement, he shall summon the board and refer the matter to it for report.

(2) The board shall in like manner make inquiry into the matter, and report in writing to the commissioner whether or not, in its opinion, it is advisable for the protection of the industry in New Zealand that relief be granted as hereinafter mentioned.

Power to grant bonus.

8. (1) In any case where the board recommends that relief be granted it shall be lawful for the commissioner to grant to the manufacturers of implements in New Zealand such bonus, not exceeding 33 per cent, as he deems necessary to enable manufacturers to compete with importers of such implements.

(2) The right to such bonus shall be subject to such terms and conditions as the governor in council thinks fit to impose.

Implements of British manufacture.

9. For the purposes of this act implements of British manufacture shall be deemed to be manufactured in New Zealand, and the importers of such implements shall be deemed to be manufacturers thereof in New Zealand.

Power to refund duty on certain materials.

10. (1) Whenever it is proved to the satisfaction of the collector that duty-paid materials have been used in the construction of any implement, he shall refund to the manufacturer of such implement the amount of duty paid on the materials so used.

(2) For the purposes of this section materials include such parts of implements as can not advantageously be manufactured in New Zealand.

Acts incorporated.

11. This act shall be deemed to be incorporated with "The customs laws consolidation act, 1882," and its amendments.

Regulations.

12. The governor may from time to time, by order in council gazetted, make regulations necessary for the carrying out of this act.

13. This act shall continue in operation till the 1st day of August, 1906, on which day it shall be deemed to be repealed. Duration of act.

SCHEDULE. Schedule.

IMPLEMENTS TO WHICH THIS ACT RELATES.

Plows of all kinds over 1½ hundredweight.
Tine harrows.
Disk harrows.
Drills, combined grain, seed, and manure, 10 colters and over.
Drills, combined grain, seed, and manure, 10 colters.
Drills, grain.
Rollers, land and Cambridge, over 7 hundredweight.
Cultivators and grubbers, over 2 hundredweight.
Chaff cutters, 9-inch mouth and over.
Self-bagging chaff cutters.
Seed cleaners.
(New Zealand Statutes, 5 Edw. VII, 1905, pp. 601–603.)

BRITISH EMPIRE.

List of company acts of the British Empire from 1862 to 1907, showing title of act and year of passage.

Year of passage.	Title of act.
	UNITED KINGDOM.
1862	Companies act.
1864	Companies seals act.
1867	Companies act.
1870	Joint stock companies arrangement act.
1877	Companies act.
1879	Do.
1880	Do.
1883	Companies (colonial registers) act.
1886	Companies act.
1888	Preferential payments in bankruptcy act.
1897	Do.
1890	Companies (memorandum of association) act.
1890	Companies (winding up) act.
1890	Directors' liability act.
1893	Companies (winding up) act.
1898	Companies act.
1900	Do.
1907	Do.
1908	Do.
1908	Companies (consolidation) act (Dec. 21, 1908).
	INDIA.
1882	Indian companies act.
1895	Indian companies (memorandum of association) act, amending act of 1882.
	DOMINION OF CANADA.
	(As distinguished from the Canadian Provinces.)
1902	Companies act.
1904	Do.
	Companies may be incorporated either under Dominion laws or those of the Provinces, but the insolvency of companies is a matter within the exclusive jurisdiction of the Dominion.
	CANADA.
	Ontario.
1897	Ontario companies' act.
1898	Ontario companies' act (amendment).
1899	Do.
1900	Do.
1901	Do.
1902	Do.
1897	Ontario mining companies' incorporation act.
1897	An act, chap. 215 of laws of 1897.
1897	Directors' liability act.
1897	Chaps. 217, 219, 220 of laws of 1897 (3 acts).
1897	Joint stock companies' winding-up act.
1902	Joint stock companies' winding-up act (amendment).
1900	Act respecting the licensing of extra-provincial corporations.
1901	Do.
	CANADA—continued.
	Quebec.
1888	Revised Statutes (arts. 4694 to 4793).
1895	Amendment.
1898	Do.
1902	Do.
1904	Do.
1904	Extraprovincial corporations.
	Nova Scotia.
1900	Nova Scotia companies' act.
1900	Companies' (winding-up) act.
1900	Chap. 130, Revised Statutes.
1902	Companies' act of 1900 (amendment).
1903	Do.
1904	Do.
1905	Do.
1906	Do.
1900	Chap. 127, relating to foreign corporations.
1903	Amendment.
1904	Do.
	New Brunswick.
1903	New Brunswick joint stock companies' act.
1904	New Brunswick joint stock companies' act (amendment).
1906	Do.
1903	Consolidated Statutes, chap. 86.
1903	Companies' winding-up act.
1903	Extraprovincial corporations, licensing of.
1905	Extraprovincial corporations, licensing of (amendment).
	Manitoba.
1902	Manitoba joint stock companies' act.
1904	Manitoba joint stock companies' act (amendment).
1905	Do.
1906	Manitoba joint stock companies' act (amendment) (2).
1899	Joint stock companies' winding-up act.
1902	Chap. 29, laws of 1902.
1903	Foreign corporation act.
	Province of Northwest Territories.
1901	Companies' ordinance.
1903	Foreign companies' ordinance.
1903	Companies' winding-up ordinance.
1903	Trust companies' ordinance.
	British Columbia.
1897	Companies' act (a consolidation act).
1898	Companies' act (amendment).
1899	Do.
1900	Do.
1901	Do.

List of company acts of the British Empire from 1862 to 1907, etc.—Continued.

Year of passage.	Title of act.
	CANADA—continued.
	British Columbia—Continued.
1902	Companies' act (amendment) (2).
1904	Companies' act (amendment).
1905	Do.
1906	Do.
1898	Mortgage debenture act.
1903	Companies' winding-up act.
1898	Companies' act (since repealed).
	COMMONWEALTH OF AUSTRALIA.
	New South Wales.
1899	Companies' act (a consolidation act).
1900	Companies' act (amendment).
1906	Do.
1901	Companies' (death duties' act).
	Victoria.
1890	Companies act (a consolidation act).
1892	Companies act amendment act.
1895	Companies documents act.
1896	Companies act amendment act.
1896	Companies act.
1897	Companies act amendment act (September).
1897	Companies act amendment act (December).
1900	Companies act.
1903	Do.
	South Australia.
1892	Companies act (a consolidation act).
1893	Companies amendment act.
	Queensland.
1863	Companies act.
1886	British companies act.
1886	Mining companies act.
1889	Companies act amendment act.
1890	Dividend duty act.
1891	Companies act.
1892	Companies (winding up) act.
1893	Companies act.
1894	Reconstructed companies act.
1895	Foreign companies act.
1896	Do.
	Tasmania.
1869	Companies act.
1895	Companies act (amendment).
1896	Do.
1898	Foreign companies act, No. 2
1901	Foreign companies amendment act.
1902	Do.
1905	Do.
1884	Mining companies act.
1895	Mining companies (foreign) act.
1896	Mining companies amendment act.
1900	Do.

Year of passage.	Title of act.
	COMMONWEALTH OF AUSTRALIA—continued.
	Western Australia.
1893	Companies act (a consolidation act).
1896	Companies act amendment act.
1897	Do.
1898	Do.
1899	Companies duty act.
1899	Companies act amendment act.
1902	Do.
	New Zealand.
1903	Companies act (a consolidation act).
1904	Mining companies act.
	SOUTH AFRICA.
	Cape of Good Hope.
1892	Companies act.
1895	Company debenture act.
1906	Companies act amendment act.
	Natal.
1864	Joint stock companies limited liability law.
1865	Law No. 18.
1866	Winding up law.
1893	Joint stock companies amendment law.
1896	Law No. 3.
1899	Share pledge act.
	Transvaal.
1874	Law No. 5, enacted by the Volksraad, resolution dated Oct. 31, 1874.
1874	Amendment, Nov. 18, 1874.
1890	Amendment, May 10, 1890.
1892	Amendment, May 24, 1892.
1892	Amendment by executive council Dec. 11, 1892, by authority of Volksraad.
1894	Volksraad resolution, June 2, 1894.
1894	Volksraad resolution, May 30, 1894.
1904	Ordinance No. 30.
	Orange River Colony.
1891	Statute law of Orange Free State, chap. 100.
1892	Law No. 2.
1892	Law No. 4.
1904	Companies amendment ordinance No. 24.
	British South Africa Co.
1895	Ordinance No. 2.

THE LAW CONCERNING MONOPOLISTIC COMBINATIONS IN CONTINENTAL EUROPE.[1]

By Francis Walker.

The problem of monopolistic combinations in industry is of world-wide character, but the law respecting them differs greatly in the most important States. These differences arise partly from various historical circumstances of social and legal development, but they are also due to different views as to the significance of such combinations and the attitude that the State should assume toward them with respect to both public and private interests.

Industrial combinations are by no means purely modern phenomena, and the jurisprudence of Europe in ancient as well as in modern times has addressed itself to the question of their propriety and legality. In the early empire, for example, the law made the cornering and engrossing of grain a criminal offense, and threatened the same with penalties varying from a denial of trading privileges to banishment and public labor. A law of Zeno, under the later empire, forbade under penalty of a heavy fine all combinations whereby it was agreed that a commodity should not be sold below a certain price. A similar policy was followed in the Middle Ages by the emperors of the Holy Roman Empire, and by the kings of France, and to their influence can be traced some of the provisions of modern European codes.[2]

The course of development in modern States has not only differed widely, but in the same State, at different periods, the changing views of political and social philosophy have been reflected in the law. A remarkable illustration of the effect of new ideas is seen in the legislation of the French Revolution, and notably in the law which forbade all associations in the form known to the French law as "corporations" (*i. e.*, guilds or associations of persons in the same trade) on account of the odious monopolies which they had established under the ancien régime.[3] Another illustration of more historical importance, and resting on deeper rooted ideas of social policy, is found in the nineteenth century movement toward industrial freedom which has brought about the abolition of laws prohibiting employers and wage earners from combining with respect to labor contracts. In this matter, indeed, the policies of modern States, following a strong democratic tendency, have shown more consistency than with respect to combinations to control production and prices. It is with this last question that we are here concerned.

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[1] Reprinted from Political Science Quarterly, vol. xx, No. 1.

[2] Menzel, Die Kartelle und die Rechtsordnung, Leipzig, 1902, pp. 12–16. See also De Birague d'Apremont, L'Accaparement et les formes modernes d'ententes entre producteurs devant le droit pénal, Paris, 1903, pp. 37–54.

[3] Cf. infra, p. 27; De Birague, op. cit. pp. 54 et seq.

The evolution and present condition of combinations in Europe is quite beyond the scope of this discussion: it is sufficient to say that, taking the continent as a whole, industrial combinations seem quite as numerous as in America, and in some countries they are highly developed. They are usually called cartels. The European cartel corresponds to an American pool, but it is generally more highly organized. Consolidated organizations of business—trusts, fusions, mergers, etc.—are rarely found.[1]

The conditions of space and material make it necessary to confine the discussion of the law to the chief industrial countries of continental Europe, viz, Germany, Austria, and France, although brief references will be made to certain others. For these three States it is possible to make a fairly complete statement of the law, although no attempt will be made to enter into the minute distinctions of legal interpretation nor to give an exhaustive digest of the cases. One phase of the subject, the regulation of competition in bidding on public contracts, will be omitted entirely.

The law can be most conveniently examined and clearly understood by taking each country separately, considering, first, the criminal law, and, second, the civil law, and examining under each (*a*) legislation, (*b*) judicial decisions, and (*c*) comment of jurists.

I. THE GERMAN EMPIRE.

The law of the German Empire is of special interest for two reasons, first, because the new code represents the latest effort of scientific jurisprudence, and, second, because it was established at a time when industrial combinations had reached a high stage of development in that country and had attracted the attention of statesmen and jurists.

The German criminal code [2] contains no prohibition against cartels nor any law specially concerning them.[3] A good many offenses under the criminal law might, of course, be committed by cartels. A case of some interest occurred recently under the article of the criminal code which prohibits extortion.[4] A powder-manufacturing combination refused to supply dealers who did not buy exclusively of them. One of their customers purchased supplies from an outsider and was threatened in consequence with a discontinuance of supply. The imperial court condemned this as contrary to the law.[5]

The provisions of the civil law in Germany are much more important with respect to cartels than those of the criminal law, but here also nothing is to be found preventing their establishment. The civil law implicitly recognizes the validity of cartel contracts, because it establishes the general principle of freedom of contract without making any exception of cartel contracts.[6] Cartels have been attacked, nevertheless, in the courts both under the industrial code and under the civil code.

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[1] Cf. Tschierschy, Kartelle und Trust, Göttingen, 1903, pp. 11 et seq.

[2] Strafgesetzbuch für das deutsche Reich.

[3] Menzel, op. cit., p. 7; Landesberger, in Gutachten über die rechtlichen Behandlungen der Industrie-Kartelle, Verhandlungen des 26ten Deutschen Juristentages, Berlin, 1903, p. 350; Hirsch, Die rechtliche Behandlung der Kartelle, Jena. 1903, p. 7.

[4] StGB, sec. 243.

[5] Urtiel v. 29 Nov., 1900, Entscheidungen des Reichsgerichts in Strafsachen, Vol. XXXIV, pp. 15 et seq.

[6] Landesberger, in 26ten Juristentag, p. 350; Hirsch, op. cit., p. 7; Menzel, op. cit., p. 16.

The industrial code (Gewerbeordnung) establishes the general principle of free industry in its first section, which reads: "The pursuit of an industry is permitted to everyone in so far as exceptions or limitations are not imposed or permitted in the present law." The interpretation of this section goes back to the beginning of the activity of the German imperial court. The earlier cases were regarding such restraints on the freedom of industry as are contained in contracts to abstain from engaging in a certain business under certain conditions of time and space. In a case decided in 1880 the court said: "The industrial code does not aim to limit the freedom of contract to any greater extent than is required in the interest of the public."[1] In 1890 a case came before the imperial court concerning the relations of a publishers and booksellers' cartel with an outsider, against whom certain discriminations had been made on account of rate cutting. The cartel was attacked as an infringement of the principle of free industry. The court, however, denied this and said in part:

> From the principle of industrial liberty it does not follow that there must be no interference with the free play of economic forces in the sense that persons engaged in an industry should be prohibited from endeavoring in the way of associated self-help to regulate the activity of these forces and to prevent excesses that are deemed injurious.[2]

The most important decision of all was in the case of the Saxon wood-pulp cartel in 1897. In this the court declared that a cartel was not only not contrary to the principle of free industry, but was often in the interest of the public as well as of the members of the cartel. As regarded the claim that the cartel was contrary to the principle of industrial liberty, the court said:

> This objection can not, however, be regarded as well founded. The association which appears in this case as plaintiff was established, as is expressly stated in its statutes and is not disputed in the pleadings, in order to prevent in the future a destructive competition beween the Saxon wood-pulp manufacturers, and to make possible the attainment of higher prices than could be gotten with unrestricted competition.

After noting that associations for such a purpose are often regarded, "especially outside of Germany," as violating the principle of industrial liberty and the public interest which that principle aims to further, the court continued:

> If in any branch of industry the prices of the products sink too low, and the thriving operation of the industry is thereby made impossible or endangered, then the crisis which occurs is destructive not only to the individuals but also to the social economy in general, and it lies therefore in the interest of the whole community that immoderately low prices shall not exist permanently in any industry.

Hence the court concluded that cartels are not improper in principle, but it indicated that this conclusion does not justify them absolutely in all cases:

> To contracts of the kind under consideration, therefore, exception can be taken from the standpoint of the protection of the general interests through industrial freedom only if in individual cases objections arise from particular circumstances, especially if there is an evident purpose of establishing an actual monopoly and of effecting an usurious exploitation of the consumers, or if these consequences are actually brought about by the agreements and arrangements made.[3]

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[1] Urt. v. 20 Oct. 1880, Entsch. des RGer. in Civilsachen, Vol. II, p. 120.
[2] Urt. v. 23 Juni, 1890, Entsch. des RGer. in Civilsachen, Vol. XXVIII, p. 244.
[3] Urt. v. Feb. 4, 1897, Entsch. des RGer. in Civilsachen, vol. xxxviii, pp. 156–158.

This last statement is of especial interest, because it shows that the court recognizes at least a theoretical limit to the freedom of combination. This limitation, however, does not seem to have any great practical value, inasmuch as there are various cartels which have organized a practical monopoly and have pursued what may be fairly termed extortionate price policies, in the face of bitter complaint and against litigious parties, without the legality of their constitution being called in question.[1]

It appears, therefore, from the uniform judgments of the imperial court that the cartels are not regarded as infringing the principle of industrial liberty.

Under the civil code the cartel contracts have likewise been declared lawful. There are only two articles of interest here, which read as follows:

> Art. 138. A jural act that is repugnant to morality is void.
> Art. 826. Whoever, in a manner repugnant to morality, intentionally inflicts an injury upon another is bound to such other for compensation of the injury.[2]

It does not appear that any efforts have been made to attack the validity of cartel contracts under the first of the above sections (138), but decision was rendered on the same point of law in a number of cases before the present code went into effect. An early cartel case was decided in the highest Bavarian court (*oberstes Landgericht*) in Munich, April 7, 1888. In this case the court declared that a cartel contract of certain tile manufacturers to limit production and fix minimum prices was not only valid, but also a prudent business arrangement. The court denied that either the aim or the means adopted in such an agreement was contra bonos mores.[3]

Of much greater importance, because decided in the imperial court, was the case of the book publishers' cartel referred to above. It was claimed that this cartel was contrary to good morals and public order. The court said that such a point of view might be relevant, if it were shown that a combination had been formed to control the market and to check the free play of economic forces for speculative purposes, but went on to say:

> A complete distinction should be drawn between such combinations and associations of fellow craftsmen for the purpose, pursued in good faith, of maintaining an industry on a living basis through protection against depreciation of products and against other disadvantages arising from the price cutting of individuals.[4]

The other article of the civil code (826) cited above might have some application to the malpractices of cartels, but not to their legal existence. A case came up recently wherein a steamship line tried to force a competing line out of a certain trade by refusing to take freight at the ordinary rates from one of its large shippers if he continued to patronize the competing line. The injured shipper brought suit to compel the steamship line to desist from such action. The claim of the plaintiff was sustained in the court of first instance,

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[1] E. g. Halbzeugverband, Cokssyndicat.
[2] Bürgerliches Gesetzbuch für das deutche Reich, arts. 138, 826. For "Rechtsgeschäft," here rendered "jural act," there is no precise English equivalent; it includes all acts by which individuals endeavor to produce legal results—contracts, conveyances, etc. The phrase translated "morality" is "die guten Sitten," which is itself a translation of the Latin "boni mores."
[3] Steinmann-Bucher, Schmoller's Jahrb., 1891, pp. 186, 187; Menzel, op. cit., pp. 43, 44.
[4] Urt. v. 25 Juni, 1890, Entsch. des RGer. in Civilsachen, vol. xxviii, pp. 243, 244.

denied on appeal, but again sustained in the imperial court. The imperial court said, in part:

> Article 826 is adapted and also intended by the legislator to establish a protection against unfair treatment in a comprehensive manner, particularly for business intercourse, in so far as provision is not made through special laws.[1]

The court suggested that an action for extortion might lie. It also pointed out that the obligation of a common carrier (Transportzwang) was established in Germany for railway transportation only, not for other land carriage nor for sea carriage, and suggested that such a compulsion might appear to be necessary, especially against enterprises which subserved a public interest and which possessed, legally or de facto, a monopoly of such service. Meanwhile, even in the absence of any legal duty to render the service, the arbitrary and unfair refusal of transportation at the ordinary rates was to be regarded as an action contra bonos mores. As a standard of morals within the meaning of article 826, the court accepted the sense of propriety (Anstandsgefühl) of right-minded persons and in commercial matters the views and sentiments of honorable business men.[2]

Although this case had no direct relation to the cartels, the position taken by the court is of much interest as showing its attitude toward monopolies and toward practices in which cartels are frequent offenders.

In this connection may be noticed again the case of the book publishers' cartel. The court denied the claim of the plaintiffs to damages from the cartel upon the ground that the record showed no injury, but it did not decide whether the means used by the cartel against outsiders, viz, total exclusion from supply of books, refusal to furnish the trade journal or to publish advertisements therein, denial of certain rebates, and the publication of a black list in the trade journal, were lawful or not, although it intimated that they were not lawful.[3]

The courts have not only refused to declare cartel contracts illegal, but they have also expressly declared them valid, including the penalty clauses embraced therein for violation of such agreements. Thus, in the above-cited Saxon wood-pulp cartel the refusal to pay the conventional fines was declared a breach of a lawful engagement.[4] This decision was made before the code in its present form went into effect, but the same principles were applied as in the recent case regarding the interpretation of the agreement of the coal syndicate. Speaking of this agreement, the court said: "against the validity of which well-founded objections do not exist." The court declared that the Hannibal mine must perform its obligations under the agreement or pay damages.[5] A still more recent case, in which the validity of a cartel agreement was involved, concerned the right of a member to withdraw. The court held the agreement to be a valid one, but declared that a member might withdraw in case the other parties made the proper fulfillment of the contract impossible.[6]

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[1] Urt. v. April 11, 1901, Entsch. des RGer. in Civilsachen, vol. xlviii, p. 119.
[2] Urt. v. Apr. 11, 1901, Entsch. des RGer. in Civilsachen, vol. xlviii, pp. 123–127.
[3] Urt. v. 25 Juni, 1890, Entsch. des RGer. in Civilsachen, vol. xxviii, pp. 239–241, 245–251; cf. Menzel, op. cit., pp. 44, 45.
[4] Urt. v. 4 Feb., 1897, Entsch. des RGer. in Civilsachen, vol. xxxviii, pp. 155, 156.
[5] Zeche ver. Hannibal W. Rheinisch-Westfälisches Kohlensyndikat, Urt. v. 19 Feb., 1901, Entsch. des RGer. in Civilsachen, vol. xlviii, pp. 308–315.
[6] Urt. v. 6 Nov., 1902, Entsch. des RGer. in Civilsachen, vol. liii, p. 19.

In the opinions of jurists may be found some useful criticism of the meaning and possibilities of the present law. The subject was considered with much minuteness in the twenty-sixth convention of the German jurists in 1902, and was again under consideration at their recent meeting in the autumn of 1904. One of the prominent speakers in the convention in 1902 declared that the existing law was sufficient to prevent objectionable practices, i. e., associations aiming at monopoly could be attacked at their establishment under article 138 and in their operation under article 826.[1] Landesberger expressed the opinion that it was possible to test the validity of cartel contracts generally under article 138, and supported his opinion by a citation from the opinion of the imperial court in the Saxon wood-pulp-manufacturers' case. He said:

> I do not hold it (art. 138) as totally inapplicable. Cartel agreements and cartel resolutions of a directly usurious character or acts done in the execution of cartel resolutions which were demonstrably intended to ruin an outsider might well be characterized as contra bonos mores.[2]

He confessed that in any case the article was applicable only in a very limited range of cases. (Rundstein takes a somewhat similar position, holding that article 138 would apply, if cartells possessing a monopoly were guilty of exploiting the public, or if it could be proved that they intended to do so.[3]) Boyens thought that a cartell contract that did not provide a fair arrangement between the members—one, for example, that gave the large members too much power over the small members—might be contra bonos mores in the sense of article 138.[4] It is interesting to observe that the original draft of article 138 had a wider scope, invalidating not only jural acts that were repugnant to morality, but also such as were repugnant to public order.[5]

A good deal of hope, in a small way, appears to be put in the provisions of article 826. For example, Juliusberg thinks that boycotting and usurious exploitation through exorbitant prices may be made a ground of action for damages under this article.[6] Boyens claims that intentional underbidding, with the aim of preventing a competitor from working without loss, or of compelling him to enter a cartell, may be attacked under this article as an effort to cause damage to another in an immoral fashion, and that such proceedings may be contested both preventively and repressively. For these reasons, also, a cartell might be declared invalid.[7] Menzel, on the other hand, thinks that article 826 is of little practical significance in opposing cartell excesses, because a judgment can seldom be obtained on account of the difficulty of proving malice (dolus).[8]

II. AUSTRIA.

In no important industrial country in Europe are the laws less favorable to industrial combinations than in Austria, but in hardly

[1] Nentwig, im 26ten Juristentag, p. 292.
[2] Landesberger, im 26ten Juristentag, p. 350.
[3] Rundstein, Das Recht der Kartelle, Berlin, 1904, p. 62.
[4] Boyens, im 26ten Juristentag, p. 329.
[5] Cf. Menzel, op. cit., pp. 35, 36. The term used was "öffentliche Ordnung," which may be taken as precisely equivalent to the French "l'ordre public," and substantially equivalent to the English "public policy."
[6] Juliusberg, Die Kartelle und die deutsche Kartellgesetzgebung, Berlin, 1903, p. 32.
[7] Boyens, im 26ten Juristentag, pp. 338, 339.
[8] Menzel, op. cit., p. 43.

any other country are such combinations more numerous. The laws concerning them were established at a period before they had acquired the significance that they possess to-day, and the application of these older laws to cartel agreements has been sometimes disputed. The policy of the Austrian Government has tended recently to increase the restrictions placed on combinations, but the legislative projects in this direction have not been enacted into law.

There are no penal laws against industrial combinations. The penal code of 1852, which in general is still in force, provided that "agreements of persons engaged in industry (Gewerbsleute), manufactures (etc.) * * * to raise the price of a commodity * * * to the disadvantage of the public or to reduce the same to their own advantage or to cause a scarcity," should be punished as misdemeanors.[1] The provisions of this section were abrogated by the law of April 7, 1870, which declared that such agreements should be deemed repugnant to the penal law only in case intimidation or force were used. The Austrian criminal law, therefore, now contains no provisions specially applicable to cartells.[2]

It should be noted, however, that while the law of April 7, 1870, abolished the penalties previously imposed on industrial combinations, it did not legalize them from the point of view of the civil law. On the contrary, article 2 of the law of 1870 declares that certain agreements concerning the giving or taking of employment, etc., "have no legal operation." Article 4 declares: "The provisions contained in articles 1 and 2 have application also to agreements of persons engaged in industry (Gewerbsleute) with the purpose of raising the price of a commodity to the disadvantage of the public."[3]

The law of 1870, therefore, made industrial combinations void, but, on account of the character of the law of procedure existing before 1895, this declaration of the statute could be evaded, for most practical purposes, by providing that any matters of dispute in regard to the obligations of the parties to the agreement should be submitted to a private board of arbitration, established by the said agreement. According to the law of procedure existing before 1895, the decisions of such an arbitration were binding and could be annulled in the courts only in case of open fraud.[4] The law of procedure was altered in 1895 by the introduction of a new code, which declares that the decisions of a private court of arbitration are inoperative "if repugnant to compulsory rules of law," and it is provided that parties can not lawfully renounce their right of appeal to the courts in such cases.[5]

There have been some important judicial decisions in Austria respecting the validity of cartel agreements, interpreting the law of 1870. It is remarkable that no cases came up for decision until within the last decade, and after Prof. Menzel had pointed out its application in his celebrated discussion of the subject before the Verein für Sozial-Politik in 1894.

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[1] Strafgesetzbuch vom 27 Mai, 1852, art. 479.
[2] Cf. Menzel, op. cit., p. 19.
[3] Gesetz vom 7 April, 1870, Reichsgesetzblatt für die im Reichsrate vertretenen Königreiche und Länder, Jahrg. 1870.
[4] Allgemeine Gerichtsordnung, art. 273.
[5] Civilprocessordnung, vom 1 Aug., 1895, art. 595.
There is also a provision in the Austrian civil code (Allgemeines bürgerliches Gesetzbuch, art. 878), very similar to art. 138 of the German civil code, mentioned above.

The first cartel case to be decided was with respect to a cartel of oleum producers, which had been organized in 1887 for a limited period for the regulation of the sale of oleum, chiefly, though not exclusively, in the export trade. A suit was brought for damages for breach of the terms of the agreement, and the defense was made that the contract was invalid under the law of 1870. The supreme court (oberster Gerichtshof) held that the agreement was invalid, and denied the claim for compensation. The court said: "The plaintiff objects, with justice, that such an agreement is without legal operation." The decision of the court depended largely on verbal definitions. The word "Gewerbsleute" was held to include every industrial producer, and the word "Gewerbe" was held to be applicable to factory production as well as to handicraft. Popular use, it seems, had come to restrict "Gewerbe" to the form of industry practiced by petty craftsmen and artisans, but the court pointed out that the term was used in various laws to embrace factory industry and that there was no reason to suppose that the legislator intended to protect the public against the extortion of handicraftsmen only. The court also held that proof of the advance of prices was not necessary, and that a limitation of the agreement in respect to the area or term of operation did not make it lawful.[1]

Another cartel case came before the supreme court of Austria in the following year (1899) concerning a combination among the tallow producers (Federweisscartel) of Styria, which had established a central selling bureau in Vienna for a term of five years. Conventional penalties were provided for breach of the agreement. A firm which was a member of the cartel brought an action to obtain a judgment that its contract under the cartel agreement was invalid, but this claim was rejected in the local and provincial courts.[2] The supreme court took the same view as in the case noticed above, and declared the compact void. In regard to prices the court said that it was not necessary to prove that there had been an advance of the same to the disadvantage of the public, but that the intent to raise prices could be deduced from the nature of the agreement. Such an indication of intent appeared in provisions for the limitation of output or for the regulation of prices by a central bureau, etc. The court defined the meaning of the statute further by declaring that the rule applied not only to finished products and articles of daily use, but also to unfinished goods and goods used in production.[3]

We may notice, finally, a third case, which was decided on appeal in a provincial court. The cartel concerned was that of the Austrian enameled utensil producers. The court of original instance declared the cartel contract null and void, but held that the contracts between the cartel members and their agent—the provincial bank—were valid. The upper provincial court denied the validity of all these contracts. The court said in part:

> There is no doubt that the agreement of the plate and enameled utensil cartel has simply the purpose to raise the price of an article of consumption at present necessary and of general use, or to prevent the decline of the same * * * If the defendants claim, therefore, that they aim simply at the resto-

[1] Entsch. v. 20 Jan., 1898, Sammlung v. civilrechtlichen Entsch. des k. k. obersten Gerichtshofes, vol. xxxv, no. 242.
[2] Grunzel, Ueber Kartelle, Leipzig, 1902, p. 147.
[3] Entsch. v. 6 April, 1899, Samml. civilrechtl. Entsch. des k. k. obersten Gerichtshofes, vol. xxxvi, no. 3419.

ration of the market to normal conditions, then that is simply to be understood in the interest of carteled firms, but not in the interest of the public. * * * The objection that since the formation of he cartel the retail prices have fallen is irrelevant, according to the coalition law, as regards the legal operation of the cartel.[1]

It seems that the court regarded the contracts between the cartelled producers and the bank which acted as their agent as invalid, on the ground that the general organization fixed the prices and the bank was, in effect, an organ of the cartell and not a third party.[2]

The criticism of jurists is of considerable interest in connection with the Austrian law. Menzel wrote, in 1894, that "Austria is the only State which possesses an explicit and unambiguous legal norm concerning the validity of cartell agreements."[3] Nevertheless the lower courts have not shown perfect agreement with the supreme court as to the meaning of the law, and some intelligent writers have strongly objected to the position taken by the supreme court. Hitchmann, for example, criticises the declaration of the court in the tallow producers' cartel case, on the following grounds: (1) There was no express price agreement, which he thinks should be necessary to bring it clearly within the prohibition of the law; (2) "Gewerbsleute" does not include manufacturers, but designates only petty craftsmen; and (3) the "public" does not mean a particular group of people, but the people generally, who are interested in the prices of consumption goods only.[4]

Grunzel (who is in a measure a representative of the industrial interests) also objects strongly to the interpretation of the law given by the supreme court. He holds with Hitchmann that neither law nor custom warrants applying the term "Gewerbsleute" to large corporations. Further, he denies that the existence of a cartell is sufficient evidence of intent to raise prices, and asserts that most cartells do not attempt to raise prices, but try to keep them from falling. He points out that the law expressly states that agreements designed to advance prices are unlawful, and he ridicules the attitude of the court in saying that the proof that retail prices have fallen is irrelevant. He holds also with Hitchmann that the commodities embraced within the meaning of the law are those of general use, and would not include, for example, locomotives or potash.[5]

Still more significant is the statement made in the explanation of motives which accompanied the celebrated Austrian cartell bill of 1897. The representatives of the Government expressed doubts as to how far the law of 1870 would be applicable in respect to the validity of cartell agreements. According to the opinion expressed therein, it would not affect (1) cartells for the maintenance (not increase) of prices; (2) cartells for the depression of the prices of the raw material, whether directly, or indirectly by a rayon agreement; and (3) cartells to procure more favorable arrangements as to freights, insurance, etc.[6]

In regard to the question whether prices have been advanced or not, attention should be called to the wording of the statute, which expressly regards aim or purpose (Zweck). Rundstein approves

[1] Quoted from Grunzel, op. cit., p. 148.
[2] Cf. Landesberger, im 26ten Juristentag, p. 354.
[3] Menzel, op. cit., p. 19.
[4] Hitchmann, Kartelle vor Gericht, Handelsmuseum, 16 Nov., 1899, pp. 541, 542.
[5] Grunzel, op. cit., pp. 144–149.
[6] Regierungsvorlage, Gesetz vom * * * über Cartelle in Beziehung auf Verbrauchsgegenstände, u. s. w., 154 der Beilagen zu den Stenogr. Protokollen des Abgeordnetenhauses, XV Sessions, 1898, erläuternde Bermerkungen, pp. 23, 24.

of the position taken by the courts that the actual price movement is immaterial.[1]

In spite of the unfavorable attitude of the law, cartells have flourished in Austria almost as vigorously as in Germany. They exist, as Landesberger says, according to the maxim: "Where there is no plaintiff, there is no judge." He says that the cartells might be attacked successfully only if an action by outsiders (actio popularis) were allowed, though even such an action would not do much more than procure a formal declaration of nullity. Such agreements exist, in other words, not by virtue of law but on the basis of business convenience and commercial faith and credit—"but only as long as self-preservation is not at stake." Their existence and practical operation depend on the interests of private parties in maintaining or destroying them, so that under the existing law the good ones may be destroyed and the bad ones may survive. The effect of the law of 1870, therefore, according to this authority, is to deprive parties of the right of complaint for the nonobservance of cartell agreements, and to make them void in all matters for which the courts have to consider them.[2]

III. FRANCE.

The era of the Revolution was marked by the abolition of the ancient corporations, maitrises, or jurandes, and by the enactment of severe laws against combination. The law of June 14–17, 1791, denounced agreements of members of the same trade to fix the price of their industry or labor as "unconstitutional, hostile to liberty, and of no effect."[3] On July 26, 1793, the "loi contre les accapareurs," i. e., the law against engrossers and the like, was adopted, which threatened offenders with the penalties of death and confiscation.[4] Just before this, on May 4, 1793, the famous law of the maximum had been established, i. e., a law which fixed the maximum price for each of a great variety of articles, in order to afford a prompt remedy against monopoly.[5] Most of the legislation of the Revolution in this direction was of an ephemeral character, but the law against l'accaparement, with less severe penalties, was embodied in the penal code of 1810, articles 419 and 420, and has continued to the present day. The more important of these articles reads as follows:

ART. 419. All those who by false or calumnious reports sown by design in the community, by offers of prices in advance of those asked by the vendors themselves, by union or coalition between the principal possessors of the same merchandise or commodity not to sell or to sell at a certain price only, or by whatever fraudulent ways and means, shall have effected the advance or decline of the prices of commodities or merchandise or of public securities above or below the prices which the natural and free competition of trade would have fixed, shall be punished with imprisonment of one month at least or of one year at most and with a fine of 500 francs to 10,000 francs. The culprits may, further, be placed by decree or judgment under the oversight of the superior police during two years at least and five years at most.

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[1] Rundstein, op. cit., p. 54.

[2] Landesberger, im 26ten Juristentag, pp. 350–355. It is noteworthy that the Kaufmännischer Verein of Vienna recently condemned any attempt by a member of a cartell to escape his contractual obligations by recourse to the courts. (Cf. Kartell-Rundschau, 1904, p. 435.)

[3] Loi relative aux assemblés d'ouvriers et artisans de même état et profession, 17 juin, 1791, Lois et actes du gouvernement, vol. iii, Paris, 1834.

[4] Babled, Les syndicats de producteurs et détenteurs de marchandises, Paris, 1893, p. 126. De Birague, op. cit., pp. 61, 62.

[5] Babled, op. cit., p. 128.

The following article (420) provides heavier penalties if the commodities in question are breadstuffs, bread, or wine or other potables.

Since the adoption of this code other laws of minor importance have been enacted concerning combinations under particular conditions.[1] For our present purpose these require no notice. One law, however, not directly concerned with our subject, requires attention, because it has been declared in some quarters to abrogate articles 419 and 420 of the penal code. This is the law of March 21, 1884, concerning the establishment of trade associations. In article 3 of this law the aim of the associations authorized is defined as follows: "Professional syndicates have for their exclusive aim the study and defense of economic, industrial, commercial, or agricultural interests."[2] The courts have held, as seems only reasonable, that this does not permit them to violate a criminal statute from the operation of which they are not expressly excepted.[3]

One of the earliest cases involving the status of cartels under the criminal code was that of certain soda manufacturers of Marseille, which was decided in 1838. The manufacturers had formed a combination to sell all their output through the agency of one Mille, who added the precaution of hiring six factories which were not in operation, in order to prevent the reestablishment of competition. Prices were advanced about 25 per cent, although the price of the raw material had declined. The court of cassation declared briefly that this combination came within the prohibition of article 419.[4] In a case decided in the same year the court of cassation declared that a combination of concerns in the form of a fusion or consolidation was not an illegal coalition within the meaning of that article, because a plurality of persons was necessary, and this was not found in a single juristic person (personne morale).[5] In the year following (1839) an action was brought against a coach company respecting agreements as to the price of places, and the court of cassation declared that the commodities embraced in article 419 included incorporeal as well as corporeal goods.[6]

The following decision illustrates the application of the law where prices are depressed by combination. A case came before the court of cassation in 1879 concerning a combination among the manufacturers of iodine, who employed a common purchasing agent, divided up the field which supplied the raw material, and fixed the prices of the same. The court said that this was a combination "organized by the principal manufacturers of iodine," tending to give to the commodity prices above or below the course which would have been determined "by the free and natural competition of commerce," and was repugnant, therefore, to article 419 of the penal code and to article 1133 of the civil code.[7]

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[1] Cf. Colliez, Trusts, cartels, corners, Paris, 1904, p. 467; Merlin, Les associations ouvriers et patronales, Paris, 1899, p. 129.

[2] Loi 21 mars, 1884, relative à la création des syndicats professionnels.

[3] Vide infra, p. 32, A. et autres c. Germain-Perret, Cour de Lyon, 21 Avril, 1896, Journal du Palais, 1896, pt. ii, p. 164.

[4] Mille et autres fabricants de soude de Marseille c. Ministère public, Cour de Cassation, 31 août, 1838, Journal du Palais, 1838, p. 391.

[5] Bulletin des arrêts de la Cour de Cassation Criminelle, 1838, p. 40.

[6] Cour de Cassation, août, 1839, Journal du Palais, 1839, p. 297.

[7] Courmerie c. Pellieux et Mazé-Launay, Cour de Cassation, 11 fév., 1879, Journal du Palais, 1879, p. 490.

The earlier judgments of the French courts showed a tendency to interpret and apply article 419 in a comprehensive and effective manner. The modern tendency has been less rigorous. The opinion of the court of Paris in the following case is a good illustration of this statement. It is quoted at considerable length, because it shows very clearly the mode of reasoning adopted by the courts at the present day. The judgment is prefaced by a statement of the facts:

That Ferry and May have made contracts like those in question with all the other principal producers of phosphates of the Somme; that the production of all the adherents thus grouped together is about two-thirds of the total production of the Somme; that the agreements present the appearance of a contract of commission, but it is not the less evident that they have for their end simply the monopoly (l'accaparement) of the product to the profit of the group directed by Ferry and May, and of the two latter themselves; that in fact each of the adherents must limit his production to a fixed figure; that he is forbidden furthermore to sell or deliver directly, under any form whatever, either in France or abroad, any crude phosphates, dry or milled, of a standard equal to or higher than dry 60 per cent tribasic calcium phosphate; that a penalty was stipulated in case of infraction of this clause; and that the minimum and maximum selling price was fixed semiannually in a general meeting convoked by the order of a supervisory committee.

On the basis of these facts the court reached the preliminary conclusion:

That such agreements are illegal; that they constitute, in fact, a true coalition, tending to advance the course of phosphates above the price which would be fixed by free competition and to prevent sale below the price thus artificially increased; that they fall, therefore, under article 419 of the penal code and would be in consequence null, as contrary to public order.

Certain other facts and considerations, however, were recognized as modifying this conclusion:

Considering that it is necessary, in order that article 419 apply, that there be a union or coalition between the principal holders of the same merchandise or commodity, with the intent of not selling except at a price different from that which would have been fixed by free competition; that it is proper to inquire, if in the present case evidence is found of this double fact, both as concerns the union or coalition and as concerns the end sought or obtained.

Considering that it is proper first of all to observe that the merchandise in question (phosphates) is a product which, be it of the same grade, be it a grade of less richness as to the tribasic calcium phosphate which it contains, is met with not only in the Somme but is further distributed in great quantity over the whole surface of the earth and notably in various parts of France, Belgium, and America; * * *

Considering, on the other hand, that, if it be true that a certain number of the producers of the Somme are grouped around Ferry & May, their common agent, by their adhesion to contracts similar to that of December 26, 1887, it is proper to remember that this group, as results from the explanations furnished at the bar by Cajot & Cie. themselves, represent only two-thirds of the total production of the Somme; and that, if it is true, as is observed, that by reason of the geographical situation of the deposits the operations of the said group can have a great importance upon the French market, it is established, on the other hand, that this group is held in check, as well by the outside producers of the Somme, as by other French and foreign producers; * * *

In view of these facts, the court declared that there was not "the union or coalition between the principal holders of the commodity" mentioned in article 419 of the penal code. The court added the following significant statement:

That this syndicate comprises in reality but a part of the phosphate works of the arrondissement of Doullens; that they have agreed upon the determination of the amount of their output, in order to assure the movement to market

and principally the exportation of the same, and for the defense of their common interests, and to fight without disadvantage the competition of numerous markets, as well in France as abroad; that one can not demonstrate in respect to it either monopoly, or attempt at monopoly of the said commodity.[1]

A case of international notoriety, and of some interest on account of the points of law involved, arose in connection with the famous copper corner (1887–1889) engineered by Secrétan in Paris. Appeal was taken to the court of cassation from the judgment of the court of Paris, but the same was affirmed on grounds substantially as follows: Secrétan had caused an advance in the price of copper by his contracts with producers in various parts of the world, who were cognizant of his objects and hoped to profit by his operations, but who had made no agreements with each other. The price of copper, furthermore, was not agreed upon, nor was there any attempt to fix it, though it was hoped and expected that it would be advanced. In considering this situation with respect to article 419 of the penal code, the court of Paris declared that the agreement of Secrétan as a buyer with the producers as sellers was such as to bring it within the prohibition of the law, as the combinations forbidden by the law did not have to be exclusively among either buyers or sellers, and the agreements of the various producers with Secrétan were in effect, though indirectly, an agreement among the producers. One circumstance, however, essential to the proof of a violation of the law was lacking, namely, an agreement as to the price. From the nature of the arrangement this could only exist in the assumption by Secrétan of an obligation to sell only above a certain price, and no such condition was to be found in the contracts. Hence the court concluded that the law had not been violated.[2]

A rather interesting case came up in 1892 concerning a combination of pottery manufacturers near Grenoble who had established a central selling agency. In view of the facts that the agreement was limited as to time and as to markets, that it embraced only a minority of the producers of the commodity, and that the prices had fluctuated with the market, the court concluded that the agreement was not an unlawful one under article 419.[3]

The courts do not always take this benignant attitude, even at the present day, as may be seen from the next case, which also shows the interpretation put on the law of 1884, regarding syndicats professionels, with respect to article 419 of the penal code. Germain-Perret brought a complaint against certain dealers in aerated waters with whom he had been associated, namely, 18 of the principal dealers of Lyons, who had formed a syndicate in 1891. This syndicate determined the selling price under the sanction of conventional penalties, among which was exclusion from the syndicate, with notice of the fact to the parties who operated the springs, from whom the supplies were obtained, and with whom the dealers had an under-

[1] Cajot et Cie. c. Ferry et May, Cour de Paris, 14 avril, 1891, Journal du Palais, 1892, pt. ii, p. 150.

[2] Secrétan c. Société des Métaux, Cassation, 24 avril, 1891, Journal du Palais, 1901, pt. ii, p. 227, note. This decision has not met with universal approval. De Birague writes (op. cit., p. 98): "Pour que la condamnation soit possible, il n'est d'ailleurs pas nécessaire que l'on rapporte la preuve d'un engagement exprès pris par les coalisés, de ne vendre qu'à certaines conditions; il suffit qu'il ressorte suffisamment des débats que tel était le but auquel tendait la coalition. La décision contraire, rendue par la Cour de Paris dans l'affaire des Métaux, est généralement critiquée."

[3] Bonneton c. Société des Tuileries. Cour de Grenôble, 1 mai, 1894, Journal du Palais, 1894, pt. ii, p. 278.

standing that they should be supplied exclusively. In consequence of the fact that he was no longer a member of the syndicate, Germain-Perret found himself unable to supply himself with mineral waters, except by indirect and more expensive methods. The court said:

Considering that the coalition in question has thus had the effect of advancing the price of waters to him above that which would have been fixed by the natural and free competition of trade. * * *

Considering that the right accorded by the law of March 21, 1884, to form syndicates could not exonerate the accused from the responsibility incurred by them by reason of the above facts; that, even if the syndicate established by them in 1891 had been within the terms of that law, the exercise of the rights conferred by it can not render lawful the violation of the prohibitions decreed by articles 419 and 420 of the penal code, which have not been abrogated by that law and are still in force.[1] * * *

An attempt to form a monoply contrary to article 419 of the penal code was condemned very recently in the case of the St. Astier Lime Co. This was an association "sous nom collectif." The plaintiff, Mallebray, demanded the dissolution of the association, on the ground that it was formed with the sole purpose of suppressing competition among the lime manufacturers of St. Astier. The defendants declared, on the other hand, that it was not an unlawful coalition, such as had formerly existed among them and had been dissolved by judicial decree (Dec. 16, 1890), but a legally organized association. This combination was condemned, nevertheless, on the ground stated in the complaint.[2]

The French civil code contains certain provisions which are of significance with regard to the legality of industrial combinations, namely:

Art. 6. Laws which concern public order and good morals may not be set aside by agreements of individuals.

Art. 1131. An obligation that is groundless or is based on a false ground or on an unlawful ground can have no effect.

Art. 1133. The ground is unlawful when it is prohibited by law or when it is contrary to good morals or to public order.

The provisions of the civil law have often been applied to industrial combinations by the courts, generally in connection with article 419 of the penal code, but sometimes independently where the penal code could have no application. A comparatively early case dealt with an oral agreement of five quarrymen near Liverdun not to deliver stone for the construction of a fort at a price lower than 3.50 francs per cubic meter. The court of Nancy, which tried the case, said that while article 419 of the penal code might not apply, yet this agreement was, nevertheless, "contrary to the principles of free competition," and a serious attack on commercial liberty. Hence the court declared it "null and of no effect, as having an unlawful basis."[3]

In the case of the iodine manufacturers (cited above, p. 29, in connection with art. 419 of the penal code) one ground for the decision was that it was an invalid agreement under article 1133 of the civil code. In the case of the phosphate manufacturers (cited above, p. 29) the lawfulness of the agreement was also questioned under the civil law, but the court declared that there was "no condition restrictive of the liberty to sell phosphates which the defendants were

[1] A. * * * et autres c. Germain-Perret, Cour de Lyon, 21 avril, 1896, Journal du Palais, 1896, pt. ii, p. 164.

[2] The decision of the lower court, here cited, will be found in the report of the proceedings on appeal, cited infra, p. 35.

[3] Cour de Nancy, 15 déc., 1874, Journal du Palais, 1875, p. 1114.

eventually engaged to furnish." In the case of the lime manufacturers of St. Astier (cited above, p. 33) the lower court had condemned the combination on the ground of article 419 of the penal code; on appeal the case was decided on the broader ground of articles 1131 and 1133 of the civil code. The court said, in part:

Adopting the motives of the first judges; considering, moreover, that it is not necessary, in order to pronounce the nullity of the association denounced by Mallebray, to establish that it unites all the conditions exacted for the application of article 419 of the penal code; that it suffices to establish that the obligation of the various parties had an unlawful basis and purpose; that such was the case of the members of the association criticized, since it results from the facts and circumstances of the case that the said association had been formed only in order to forestall and prevent the foundation at St. Astier of competing factories, which was contrary to the principle of liberty of commerce and industry; that thus the agreement attacked ought to be annulled also by application of articles 1131 and 1133 of the civil code. * * *[1]

In considering the French law and the interpretation of the courts, the first impressions probably would be that they were characterized by uncertainty and inconsistency. It is doubtful, however, if this impression is correct. In the interpretation of the various rules established by the law, it is the effort of the courts, as has been shown by the above citations, to ascertain whether there is a combination exercising a monopoly power in a manner injurious to the consumers. The matter is skillfully summed up by Prof. Lévy-Ullmann in a note to a recent case in the Journal du Palais. Prof. Lévy-Ullmann chooses to call all industrial combinations "trusts," hence this word is used in the translation.

For the purpose of determining whether the trust submitted to their judgment constitutes or does not constitute a coalition of monopolists united to establish an artificial advance of prices, the judges seek first of all to discover whether the trust represents in the region where it operates the totality, or at least the majority in number and importance, of the producers of the commodity. Further, they take into consideration the area in which the syndicate acts; the more extended the area, the more vast the monopoly and the more difficult its destruction. The duration of the trust agreement furnishes still a third point to be considered. They examine, finally, its influence upon the course of prices; from the balance of prices, before and after the association of the producers, from comparison of these with the results of free competition, is obtained, with a quasi-mathematical precision, the tare of the trust. Number of syndicate members, area of action, terms agreed upon, result as to prices—such is the quadruple determination which is established by the most recent decisions.[2]

Some of the other writers on this subject make a different analysis of the juristic elements of the offense prohibited in article 419. Thus Babled and Colliez agree in stating that the courts recognize the following four elements, viz: (1) Plurality of agents; (2) principal holders of the commodity; (3) a defacto change in the price, above or below what would have been effected by free competition; and (4) an agreement not to sell except at such prices.[3] It is true that Babled insists that the courts have erred in holding that there must be an express agreement, and he points out that the text of the law prohibits combinations "tending" to the effects which it desires to prevent.[4] Apart from verbal distinctions, which

[1] Mallebray c. Compagnie générale des Chaux de Saint-Astier et autres, Bordeaux, 2 janvier, 1900, Journal du Palais, 1901, pt. ii, p. 225.
[2] Lévy-Ullmann, in Journal du Palais, 90, art. ii, pp. 225–231, note.
[3] Babled, op. cit., pp. 134–137; Colliez, op. cit., 461, 462.
[4] " * * * réunion ou coalition entre les principaux détenteurs d'une même marchandise ou denrée, tendant à ne pas vendre," etc. Code Pénal, art. 419.

are of considerable importance in the practical application of the law to this or that industry, etc., there are one or two points that may be noted more particularly. Article 419 furnishes protection against a combination of persons; but a fusion or consolidation, in general, escapes its prohibitions. Babled says that in such case, nevertheless, the parties may be attacked under articles 1131 and 1133 of the civil code,[1] and, indeed, that the courts in case of need should apply those sections ex officio.[2] In France, however, a fusion is an uncommon method of combination. If, on the other hand, the combination is made by establishing a company as a central agency, this, according to De Birague, will not enable the parties who have formed it and who control it to escape the law.[3]

Duchaine complains that the law is of little practical value in view of the almost undisturbed monopoly enjoyed by the sugar and oil combinations,[4] and Colliez calls it a "superannuated text," which does not correspond to the necessities of the present day. This writer in fact says that the benevolent attitude of the courts in recent years is "inspired perhaps by the desire to permit the French manufacturers to combat with equal weapons against their foreign competitors." [5]

IV. CONCLUSION.

A comparison of the laws concerning combinations in the three chief commercial States of continental Europe affords a valuable basis for the inductive determination of the proper principles of jurisprudence. It is doubtful whether a study of the whole field would add very much to the solution of the problem.[6] The three

[1] Babled, op. cit., pp. 178, 179.
[2] Babled, op. cit., p. 182.
[3] De Birague, op. cit., pp. 90–93, 114.
[4] Duchaine, Les associations de producteurs, Paris, 1903, p. 479.
[5] Colliez, op. cit., p. 470.
[6] The criminal code of Belgium contains a provision punishing the manipulation of prices by fraudulent methods only. (Code Pénal, art. 311.) L'accaparement is not a delict. (Pandectes Belges, vol. i, p. 998.) The provisions of the civil law are identical with those of France. (Code Civil, arts. 6, 1131, and 1133.) The courts have held that a cartel agreement which aimed to prevent a depression of prices was not invalid under the civil code. (Cf. De Leener, Les syndicats industriels en Belgique, Bruxelles, 1903, p. 207.)

The situation in Holland is the same as in Belgium. The criminal code penalizes fraudulent price manipulations (Wetboek van Strafrecht, art. 334) and the civil code invalidates contracts that are repugnant to morality or public order (Burgerlijk Wetboek, arts. 1371, 1373). As the two principal Dutch writers on cartels make no reference to the legal situation in Holland, it may be inferred that the legality of such combinations has not been called in question by the courts. (Cf. Wibaut, Trusts en Kartels, Amsterdam, 1903; Schalk, Ondernemersvereenigingen, Leyden, 1891.)

The situation in Italy is almost exactly the same as in Belgium. (Cf. Codice Penale, art. 293; Codice Civile, arts. 12, 1119, and 1122.) There have been a few cases on this subject in which the legality of cartels has been uniformly upheld. (Cf. Rundstein, op. cit., pp. 77, 78.) In a case in Naples in 1900 the court said, in part: "And in modern society, in which free competition is sanctioned by the prevailing principles and the right of association is recognized in full vigor, the exercise of this right of competition by associations can not be regulated except by express legislation; for it is not possible to admit that the power of individual capital has the right to impose a limit on the variation of prices and at the same time to deny this right to capital which is established either through association of capitalists or through association of producers of the same kind of goods." (Corti d' Appello, Napoli, 2 luglio, 1900, Annali della giurisprudenza italiana, vol. 34, marzo, 1900, pp. 460–462.)

The Spanish law is substantially the same as the Italian, both in the penal and civil provisions. (Código Penal, arts. 557, 558, 593; Código Civil, art. 1116.) There appears to have been a judicial determination of the meaning of the penal provisions, but this was with respect to a labor combination.

Hungary possesses no laws specially concerning cartels, but the courts have held that such combinations are invalid if they attempt to advance the prices of their products, to diminish the prices of their raw materials, or to reduce the commissions of middlemen. (Mandel, Entwurf zu einem Gesetz über die Kartellverträge, Kartell-Rundschau, 1904, p. 683.)

The Russian law of 1903, according to Rundstein (op. cit, p. 35), is similar to the Italian penal law.

countries considered furnish excellent types of three ways in which industrial combinations may be treated. The French law forbids such combinations as conspire to advance prices above a competitive level; the Austrian law declares no criminal penalty against combinations, but by declaring their agreements null and void withdraws from them the protection of the courts; the German law not only does not condemn them, but recognizes their complete validity at the civil law. It is undoubtedly true, as Rundstein says, that except in America, there is no such thing as a cartel law proper;[2] the laws affect cartels only incidentally.

The tendency is certainly away from penal legislation, showing therein a striking contrast to recent developments in America. In several countries penal laws have been abolished within the last century, e. g., in Germany, Austria, Belgium, and Italy. Most of the legislation on this subject to-day dates, however, from a period when combinations had not acquired the significance that they now possess. The only really noteworthy attempts at new legislation respecting industrial combinations have been made in Austria, and it is significant that the Austrian cartell bill of 1897–98 (cited above, p. 26) did not contemplate their destruction, but their recognition and subjection to governmental supervision. A somewhat different attitude, it is true, was taken in the recently introduced bill concerning the relations of the sugar-beet growers to the manufacturers. This bill provided that all rayon cartells, or agreements on the part of the manufacturers to divide the field, should be null and void, as well as all boycotting agreements on the part of the beet growers; and it also provided penalties for those who should attempt to put such agreements into effect by intimidation or force.[2] This is a return in the policy of the Government to the principles established under the prevailing system of law.

Positive conclusions with regard to the merits of these different systems can not be attained by analysis of the laws alone. A very extensive knowledge of the social and economic conditions and of the practical working of the laws is equally necessary, but for this the data obtainable are as inadequate as the subject is elusive. It is an easy and obvious criticism that, whether combinations are liable to criminal penalties, as in France, or to a declaration of nullity at the civil law, as in Austria, or have full validity, as in Germany, they flourish in all three countries. The vital question is whether combinations are as inimical to the public welfare in one country as in another, and to what extent the legal system may account for such differences as may exist in this respect. In this connection, also, it would be proper to study the powers and vigilance of the public administration in preventing abuses. These subjects are beyond the scope of the present inquiry, but proper information on these points might considerably alter conclusions drawn from the laws.

According to the French law industrial combinations per se are not prohibited, but only combinations which commit certain acts

[1] Rundstein, op. cit., p. 36.

[2] Regierungsvorlage, Gesetz vom * * * betreffend das Verbot der Rübenrayonnirung und die Lieferung der zur Zuckererzeugung nöthigen Rübe, 1678 der Beilagen zu den stenogr. Protokollen des Abgeordnetenhauses, XVII Session, 1903. Cf. Walker, The Sugar Situation in Austria, Political Science Quarterly, December, 1903, vol. xviii, pp. 588–592.

held to be injurious to the welfare of the community.[1] An indiscriminate prohibition, in the face of powerful economic tendencies supported by widespread if not general consciousness in business circles that these tendencies are economically necessary and defensible, fails almost entirely in achieving its purpose. It overleaps the bounds of justice and expediency. It condemns the loose combination, while giving complete validity to the fusion. It condemns the good and the bad combination, without effectually restraining either of them. If the law aims to destroy monopoly, the loose combination is no more guilty than the consolidation. Monopoly, however, is practically recognized and established by the State in many ways. It is idle, therefore, to say that monopoly is wrong and must be extirpated whenever and wherever found; monopoly is a fact which often exists of necessity and which the law can not destroy. The injurious element which has made both combination and monopoly odious is extortion, but this is not a necessary element of either of them.

It is the recognition of this fact that is the great merit of the French law. The French penal code, in prohibiting combinations tending to give a commodity a price other than that which would be fixed by free competition, aims to check and punish extortion, and that is a perfectly proper matter for criminal legislation, whether it is considered from the standpoint of jurisprudence or of political economy. The form of the law is doubtless crude and antiquated, but it has been saved by the skillful interpretation of the courts. It has one great fault, namely, that it is applicable only to a combination of persons. The evils which it seeks to punish, however, may be committed, and in these days of "trusts" are likely to be committed, by a combination of persons which the law does not recognize as such—by a combination which the law regards as a single person, viz, a corporation. This danger is not so great in France as elsewhere, but it forms nevertheless a theoretical defect in the law. In France the cartell organization is preferred to the consolidation, and if the law can be applied, as recent cases seem to indicate, to the central company (comptoir, syndicat) of a cartell, this objection to a large extent disappears.

In a similar manner the civil law of France recognizes the legality of combinations, provided their acts are not injurious to the public welfare according to the standard of free industry. This seems to be a much fairer and much wiser system than to declare them invalid without respect to their character or operation. Herein the French law, or rather the law as it is interpreted by the French courts, seems superior to the Austrian law as that is interpreted by the Austrian courts. It is true that the Austrian law declares that the agreements of a combination are null and void only in case they aim to raise the price of a commodity to the disadvantage of the public, but the courts have taken the position that this is a necessary result of such a combination and that the question of the actual course of prices is irrelevant. As the law thereby withholds its protection from all combination agreements, whether harmless or injurious, it tends to degrade the former and gives an opportunity to the unscrupulous to repudiate their engagements.

[1] The principle of "antitrust" legislation in the United States is the prohibition of combinations in restraint of trade without qualification.

The German law does not make this mistake. It puts a cartell contract on the same basis as any other contract. The good cartells are allowed to pursue the even tenor of their way; the bad cartells are subjected to the various penalties and disabilities provided for all persons and associations under the criminal and civil law. In this respect, indeed, there seems room for improvement in more complete protection against cartell excesses, particularly against arbitrary treatment in the supply of commodities and against the demand of extortionate prices.[1]

The prohibition of extortion through excessive prices is not to be confounded with the legislative regulation of prices. Legislation fixing a "just price" is sometimes practicable and desirable, but it is not adapted to many branches of industry. While legislative regulation of prices is impossible as a general remedy, it seems none the less certain that the crux of the whole problem is the prevention of extortionate prices and not the prohibition of combination. If the price extortion of a combination is not destroyed by the competition it excites it will not be destroyed by legislation against combination. It is easy to consolidate ownership. Where strong "natural monopoly" elements exist competition is quite sure to be eliminated in the long run. The relief which is sought for the evils attributed to combinations may be obtained more effectively by directing attention to prices, and the remedies available are to be found not only in the law but also in administration and in public enterprise.

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[1] Rundstein states the situation as follows: "Inwieweit man die Praxis übersehen kann, werden die Kartelle durchweg als 'gut' und 'nützlich' bezeichnet: die Bezeichnung 'schlecht' wird nicht auf das Kartell als solches, sondern auf seine Missbräuche und Auschreitungen angewandt; es heisst also: Alle Kartelle sind gut und nützlich, schlecht und schädlich sind nur ihre Ausschreitungen." (Op. cit., p. 65.)

THE GERMAN STEEL SYNDICATE.[1]

By Francis Walker.

Coal and iron are the foundations upon which national industrial greatness is based. Germany is preeminent in both, and in both of them there are powerful combinations. In the coal industry Germany takes the third rank among the nations of the world, but in iron and steel she is second only to the United States. In 1904 the pig-iron production of the four leading countries of the world was approximately as follows: The United States, 16,781,000; Germany (including Luxemburg), 10,119,000; Great Britain, 8,500,000; and France, 3,000,000 tons.[2] In steel production Germany has an even greater lead over Great Britain. The present position of Germany is the result of recent developments, which, though rapid, have been very steady.

The two primary natural conditions for the iron industry are ore supply and fuel. In both of these respects Germany is richly endowed. In regard to iron-ore production Germany is only surpassed by the United States; in 1904 the total output of iron ore was 22,047,393 tons.[3] The coal output in 1905 (excluding lignite) was 121,190,249 tons. For iron-ore production by far the most important district is the "Minette," which lies in Lorraine and Luxemburg, and extends over their borders into France and Belgium. The next most important region is on the right bank of the Rhine, in the valleys of the Sieg, the Lahn, and the Dill. The production of ore in the other regions is comparatively small, the two most noteworthy regions being one in the Province of Hanover and the Duchy of Brunswick, and another in upper Silesia. There are three great coal regions in Germany. The greatest is that of the Dortmund or Ruhr district, which produces more than half of the total. The next in importance is upper Silesia, while the Saar is third. The coal deposits of Lorraine, which are nearest to the great ore deposits of the Minette, are not yet developed. The nearest district of fuel supply is the Saar, but the coal of that region is not well adapted to the reduction of ores. The Minette, therefore, must be reduced by the Ruhr coal, and an exchange is made between the two regions, the pig-iron industry being about equally divided between them. The Ruhr also uses a good deal of ore from the Sieg, Lahn, and Dill districts, as well as a large amount of foreign ore. In upper Silesia the iron ore and coal are found in close proximity, but the supplies of the former are too scanty for the industry of that region, and a large proportion has to be imported, especially from Austria and Hungary. The Ruhr coal district is not only first in the magnitude of its coal output, but also

[1] From the Quarterly Journal of Economics, Vol. XX, May, 1906.
[2] Jahrbuch f. d. Oberbergamtsbezirk Dortmund, 1901–1904, p. 747.
[3] Vierteljahrshefte zur Statistik des Deutschen Reichs, 1905, Heft IV, of which Prussia 3,757,651 tons, Alsace-Lorraine 11,135,042 tons, and Luxemburg 6,347,771 tons.

in the quality of the coal, which is especially adapted to the production of coke. In this respect neither Silesia nor the Saar can compare with it. Although the enormous iron-ore production of the Minette is of a low grade, its cheapness makes up for the deficiency in iron. The Minette ore is a brown hematite with from 35 to 40 per cent of iron[1] and from 0.04 to 1.96 per cent of phosphorus.[2] The ore deposits are of great depth, and sometimes as much as 50 meters thick.[3] On account of its high percentage of phosphorus this ore was not much valued until the discovery of the Thomas process (basic converter). The spathic ore of Siegerland contains considerable manganese, and is of a high quality.

Although Germany is a large producer of iron ore, she is also a large importer and exporter. In 1904 Germany imported 6,061,127 tons of iron ore and exported 3,440,846 tons. Large quantities are imported for mixing with domestic ores. In the Rhenish-Westphalian district iron ore is used from over 100 different places, including almost all known sorts,[4] and coming from almost all parts of the world. The usual mixture in this region is Minette, 35 to 40 per cent; Swedish, 35 to 40 per cent; red hematite, 10 per cent; and other, 10 per cent.[5] In Silesia a typical mixture is said to be 27 per cent of the local ore with 21 per cent of cinder, 23 per cent of Swedish, and 25 per cent of Hungarian ore.[6] Another reason for the large iron-ore imports is that there are many iron furnaces far from the domestic regions of supply, so that the foreign ore can often be delivered more cheaply.

The distribution of the pig-iron production of Germany and Luxemburg is shown in the following table:[7]

Production of pig iron in Germany (including Luxemburg) in 1905.

[In thousands of tons.]

Kind.	Rhineland-Westphalia, except the Saar and Siegerland.	Siegerland, Lahn district, and Hessen Nassau.	Silesia.	Pomerania.	Hanover and Brunswick.	Bavaria, Wurttemberg, and Thuringia.	Saar.	Lorraine and Luxemburg.	Total.
Foundry	891	177	94	155	54	28	83	423	1,906
Acid Bessemer	263	38	48	.....	77	.....	.....	.....	425
Steel iron and other spiegeleisen	330	283	98	1	.....	2	.....	.....	714
Thomas or basic Bessemer.	2,868	(1)	259	.....	240	133	731	2,884	7,115
Forge or mill iron	25	213	362	.....	.....	14	.....	213	827
Total	4,377	711	861	156	371	177	814	3,521	10,988

[1] 3 tons only.

Looking first at the production of the different districts, it will be observed that Rhineland-Westphalia (or the Ruhr) has the largest

[1] Gouvy, État actuel des industries du fer et de l'acier dans les provinces du Rhin et de la Westphalia, Paris, 1903, p. 32.

[2] Tübben, Die Eisenhüttenindustrie im Oberbergamtsbezirk Dortmund und ihre Versorgung mit Eisenerz. Mittheilungen ueber den rheinisch-westfälischen Steinkohlen-Bergbau. VIII Allgemeinen deutschen Bergmannstag zu Dortmund, 1901, p. 323.

[3] Krauss, Eisen-Hütten-Kunde, I. Th. p. 21.

[4] Tübben, p. 316.

[5] Gouvy, pp. 32–33.

[6] Sympher, Die wirtschaftliche Bedeutung des Rhein-Elbe-Kanals, Berlin, 1899, p. 144.

[7] Stahl u. Eisen, Feb. 1, 1906, p. 171.

production in 1905, and that Lorraine-Luxemburg (which includes a large part of the Minette district) is second. Together they produce over 70 per cent of the total. Silesia and the Saar produce only about 8 per cent and 7 per cent, respectively. If the table be examined with regard to the kind of iron produced, it will be observed that most of the iron is of Thomas or basic Bessemer steel—in 1905 over 60 per cent—while foundry iron came second with about 17 per cent, and mill iron or puddled iron third, with about 8 per cent. Acid Bessemer steel is almost negligible to-day in Germany. The bulk of the Thomas steel is produced in the German Minette or in the Ruhr, but a not inconsiderable amount is also produced in the Saar. Most of the foundry iron is produced in the Ruhr and the Minette, particularly in the former. Silesia, which occupies a very subordinate position in other respects, is the chief producer of mill iron. The two leading facts are, however, the great preponderance of the Minette and the Ruhr in the German iron industry and the predominance of Thomas or basic Bessemer steel.

The German steel industry is quite as important in the production of finished products as in the raw material. The distribution of the manufacturing industry does not correspond very closely with the distribution of the blast furnaces. Bavaria, for example, has a large machine industry, but only a trifling output of pig iron. The Minette, though it rivals the Ruhr in the output of pig iron, can not compare with it in the output of finished products. It is only recently that the Minette has begun to develop the manufacture of rolled products on a large scale.[1] Only about one-third of the pig iron produced in the Lahn and Dill Valleys is worked up there.[2] In Silesia, however, there is an extensive output of rolled products.

Between the various producing regions there is naturally a lively competition for the German market. Especially for pig iron there tend to be developed certain natural regions of supply determined, in part, by the costs of transportation. This is distinctly the case as between Silesia and the western industrial regions. Silesia controls the supply in the far eastern Provinces, where it meets western competition only in finished products.[3] Customs duties prevent it from developing its sales to any great extent into Austria and Russia.[4] For the two great western producing regions, the Ruhr and the Minette, there does not appear to be any distinct recognized division of markets, although the latter region is naturally more directed to the export trade.

Germany is a great consumer as well as a great producer of iron products, and the consumption has increased rapidly with the great development in production, population, and wealth. In 1903 the

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[1] Bosselmann, Erzbergbau u. Eisenindustrie in Lothringen-Luxemburg. Schriften d. Vereins f. Social-Politik, Bd. 106, p. 4.

[2] Heymann, Die gemischten Werke im deutschen Grosseisengewerbe, 1904, p. 129.

[3] Kuh, Die Hüttenindustrie Oberschlesiens. Schrift. d. Ver. f. Soc.-Pol., Bd. 106, pp. 177, 191.

[4] Verhandlungen ueber die Stahlwerksverbande, Anlage 2, p. 34. As frequent reference is made to the imperial cartel inquiry, the full titles of the various cartel investigations cited are here given, with short titles for reference. The Siemenroth edition is used except for the Stahlwerksverband. The general title is Kontradiktorische Verhandlungen ueber deutsche Kartelle. The particular investigations referred to are: Verhandlungen ueber die rheinisch-westfälischen Roheisenssyndikat (Enquete, V); Verhandlungen ueber den Halbzeug-Verband (Enquete, VI); Verhandlungen ueber den Verband deutscher Drahtwalzwerke (Enquete, VIII); Verhandlungen ueber den Weissblechverband (Enquete, IX); Verhandlungen ueber den Stahlwerksverband, Beilage z. deutschen Reichsanzeiger, Aug. 18, 1905 (Enquete, S. V).

total consumption was greater than in England, although it was much below that of the United States. Reckoned, however, according to population, the consumption of England was greater than that of Germany.[1] The total consumption depends not only on the production, but also on the movement of imports and exports. Germany is both an importer and exporter of iron products. The movement for 1904 is shown in the following table:[2]

	Imports.	Exports.
	Tons.	*Tons.*
Pig iron and half products	240,233	701,985
Iron manufactures	101,492	2,022,01

The chief imports were pig iron, scrap iron, steel bars, iron for plowshares, and tin plate. The chief exports were pig iron, half products, beams and girders, rails, steel bars, sheet bars and sheets, rods, coarse iron wares, etc. The principal foreign markets for German half products in 1904 were England and Belgium. More than half of the total was destined to England.[3] The exports of rails from Germany, on the other hand, were widely distributed, though England again was the chief market. England was also the chief purchaser for beams and girders. In regard to the official export statistics a great difficulty always exists on account of the fact that the given country of destination is not the country of final destination or consumption. The exports to Holland and Belgium are, in large part, really destined for England.

Although the German iron industry is extremely formidable in international competition, it undoubtedly finds a good deal of its strength in the existence of an effective protective tariff, which secures the home market and enables it to dump its surplus products in the world markets. The protection established for the iron trade has a vital relation to the existence of the various iron and steel combinations. Before the present protective policy for the iron trade was inaugurated, the production lagged far behind the consumption.[4] In 1878 a special committee of inquiry was appointed to investigate the subject, which almost unanimously agreed that protection for the iron industry was necessary, and this conclusion was followed by a law (1879) which imposed duties higher than those recommended, which remained in effect without substantial change down to the recent recasting of the tariff (to go into effect Mar. 1, 1906). The duties on an ad valorem basis, both in the old and in the new schedules, amount to about 15 per cent on pig iron, 20 per cent on rails, 16 per cent on sheets, and 9 per cent on rods.[5]

There are a number of large iron and steel concerns in Germany which combine with the manufacture of steel the production of the raw materials—iron, ore, coal, and coke. But the individual concern has ceased to be the unit in German industry to a large extent. The

[1] Martin, Die Eisenindustrie in ihren Kampf um den Absatzmarkt, Leipzig, 1904, p. 52.
[2] Jahrb. f. d. O. Dortmund, 1901–1904, p. 734.
[3] Enquete, S. V., Anlage 7.
[4] Heymann, p. 137.
[5] Voelcker, "L'État actuel de l'industrie sidérugique allemande et sa organisation," Revue économique internationale, Déc., 1904, p. 734. Cf. Der deutsche Zolltarif vom 25 Dezember, 1902, mit dem auf den Handelsverträgen des Deutschen Reichs * * * beruhenden Bestimmungen. Berlin, 1905.

modern unit is the cartel. The most important matters of commercial and economic policy are determined to-day by these combinations.

Combinations in the German iron industry are of ancient date, and have assumed forms adapted to the contemporary economic organization.[1] The distinction between the early methods of combination and the modern system lies not only in the more comprehensive character of the latter, but also in the fact that the modern iron industry is established on a stupendous scale, and operates for the world market. It is often stated that the first German cartel was the tin-plate combination, which was formed in 1862;[2] but this was not the first cartel even in the iron trade. Rail pools existed over 50 years ago.[3] It was not until the seventies, however, that they acquired much importance. There was an overdevelopment of the iron industry at the beginning of that decade, and during the following depression the producers resorted to combinations to restrict their output and to maintain prices. The early cartels were generally quite limited as respects the commodities and the region included in the agreement. The first important exception to this (apart from rail pools) was the combination of German rolling mills, which originated in 1886 in Silesia and expanded to include the whole country. It exercised a very marked influence over the German iron trade down to its dissolution in 1893, in the face of new competition.[4] The heads of this combination, Caro, declared at the time that it failed because a cartel of rolled products could not stand alone; it was necessary to cartel the raw materials and the finished products also. At that time, however, the producers of raw materials—coal and pig iron—had not been able to extricate themselves from the position into which their previous overdevelopment had brought them. They were also facing a constant decline in prices, owing to rapid reductions in the cost of production due to technical improvements.[5] The rolling mills and the manufacturers of finer wares were in a relatively favorable situation. They often got their raw material under cost.[6] The large mixed works, or those which combined the production of raw materials with the manufacture of commercial products, complained of the disadvantage at which they were placed as compared with the straight rolling mills (reine Walzwerke).[7] There was no advantage at that time for a rolling mill to acquire coal mines or to establish blast furnaces, and hence the policy of combining the various stages of production, which had been quite conspicuous at an earlier period in the Ruhr district, did not find frequent illustration at this time.

Fundamental changes appear in the general conditions of the industry at the beginning of the nineties. A tolerably successful pig-iron cartel had been established in the Ruhr in 1886,[8] but it was not until the coke syndicate was accomplished in 1890 that a secure basis was formed. The iron industry was still in a weak position. In 1892 the pig-iron producers of the Ruhr and the Minette got

[1] Cf. Heymann, pp. 56, 59, 60, 96, 135, 136, etc.
[2] Grossmann, Ueber industrielle Kartelle, Jahrb. f. Gesetzg., Jahrg. 1891, p. 243.
[3] Kollmann, Der deutsche Stahlwerksverband, Berlin, 1905, p. 6.
[4] Cf. Caro, Der deutsche Walzwerksverband, Schriften d. Vereins f. Soc.-Pol., Bd. 60, pp. 43 et seq.
[5] Cf. Kestner, Die deutschen Eisenzölle, 1902, p. 13.
[6] Vogelstein, Die rheinisch-westfälische Montan- u. Eisenindustrie, Schriften d. Vereins, f. Soc.-Pol., Bd. 106, pp. 81–83.
[7] Heymann, p. 149.
[8] Grossmann, pp. 240–241.

together, while a pig-iron cartel was formed in Siegerland two years later.[1] The ore production in Siegerland was combined in the same year.[2] In the Minette the ore was almost entirely controlled by the blast furnaces.[3] More important than all of these was the formation of the coal syndicate in 1893.[4] This powerful combination dominated the whole industry during the ensuing decade. Thus the foundations were laid for a new régime in the iron trade, in which those who controlled the raw materials were to have a great advantage. The days of cutthroat competition between mining companies, in which the iron manufacturer could speculate on the demand for finished products with the assurance that the raw material would be abundant and cheap, were over. The new fuel cartels were founded on the principle of monopoly control, and the pig-iron cartels partook, to some extent, of that character also. The combinations among the manufacturers of iron products did not keep pace with these developments among the producers of raw materials. The cartel of German rolling mills was dissolved in 1893, and no general combination appeared to take its place. The rail pool seems to have maintained a continuous existence, but the beam pool was dissolved about 1892, though reorganized shortly after.[5]

In 1894–95 a marked improvement appeared in the commercial situation in general and in the iron trade in particular which lasted until 1900. Although some of the earlier cartels may have been "Kinder der Noth," the period of prosperity furnished apparently a healthful environment for growth.

The most important event of this period was the establishment of a half-products cartel. This innovation was a consequence of new technical conditions, and particularly the development of great steel mills for the production of Thomas or basic steel. The characteristic products of these steel mills are rails, beams, and half products (ingots, billets, sheet bars, etc.) The half products are the raw material of the rolling mills. The large steel works found that the straight rolling mills were not keeping pace with their development, and that it was safer, as well as more profitable, to work up their own crude steel to a large extent. They were generally mixed works, controlling their own supplies of fuel, ore, and pig iron. These works formed the half-products syndicate (Halbzeugverband), and this cartel, combined with the rail and beam pools, was the immediate forerunner of the present steel syndicate. At first, however, they had a price agreement simply, and it was somewhat later (1899) that the sale of half products was syndicated.[6] This cartel soon included all the great steel works of western Germany. The works supplied the straight rolling mills with their raw material, and at the same time competed with them in the manufacture and sale of rolled products. This put the rolling mills in a dangerous position, because, technically, they were no match for the great steel works. In 1897 a comprehensive but complicated cartel was established between the pig-iron producers of the Ruhr, the Minette, and Siegerland.[7] In the period between 1895 and 1904

[1] Heymann, pp. 72, 152.
[2] Sayous, La crise allemande, p. 116.
[3] Bosselmann, p. 15.
[4] Cf. Walker, Monopolistic Combinations in the German Coal Industry, New York, 1904.
[5] Heymann, p. 153; Kollmann, pp. 7, 8.
[6] Cf. Voelcker, Bericht ueber das Kartellwesen in der inländischen Eisenindustrie, Berlin, 1903, p. 52. Cf. A. Kirdorf, Enquete, VI, p. 410; Kollmann, p. 7.
[7] Heymann, p. 153; Voelcker, Bericht, pp. 30–37.

the principal cartels established for rolled products were as follows: Heavy sheets [1] and rods [2] in 1897, wire nails in 1898,[3] and light sheets in 1902.[4] The rolling mills failed, however, to cartel steel bars. In Silesia rolled products were effectively cartelled ever since 1887, in one form or another.[5] These cartels do not comprise, by any means, all of those found in the steel industry during this period, but were the most important connected with the development of organization in the steel trade.[6]

The development of cartels in various steel products called forth protective organizations among the consumers. An important organization of this sort was the Rhenish-Westphalian Purchase Association for pig iron, which was established in 1901.[7] More important than this was the association for the protection of the interests of the consumers of half-products which was formed in 1902. This included 42 concerns, mostly straight rolling mills, with a demand (in 1903) for 560,000 tons.[8] There were numerous other purchasing combinations, especially during the recent crisis.

The reasons for the formation of the steel syndicate, according to an official statement made to the Government, were substantially as follows: The discovery of the Thomas or basic process had made practicable the utilization of the immense deposits of phosphoric ore in the Minette district, and had given rise to a number of large steel works adapted to that purpose. This, in turn, had induced the existing steel works to modernize and enlarge their plants, which caused an overproduction of steel, and imposed upon the steel works the necessity of combining to restrict their output. The earlier efforts in the way of price agreements proved ineffectual, and made necessary the establishment of stronger combinations. Strong cartels thus established in various steel products proved defective also, because they lacked control over the export trade, as well as a comprehensive oversight of the market. The steel syndicate was formed, therefore, with the intention of bringing about a harmonious action in all lines of steel production. The first step was to secure an effective combination of the heavy rolled products (half-products, rails, and structural steel), and these products could be more easily brought into a combination because they were made to a great extent by a limited number of large mixed works, which had a certain economic likeness. The next step was to bring about a cartel for the light-rolled products. This, however, had not gone beyond a determination of quotas, and awaited an agreement with the outside straight rolling mills and the Siemens-Martin (open hearth) steel mills before it could be firmly established.[9]

The project for the steel syndicate was first broached in a practical sense in the autumn of 1902. The chief spirit in the movement was Adolf Kirdorf, the head of the half-products syndicate. After preliminary preparations a meeting was held in February, 1903, which chose a commission to work up a plan. This plan came up for ac-

[1] Kestner, pp. 55, 56.
[2] Enquete, VIII, pp. 696, 697.
[3] Ibid., p. 711.
[4] Statistik d. Oberschles. Berg- u. Hüttenwerke, 1902, p. 80.
[5] Enquete, S. V., Anlage 2.
[6] Cf. Voelcker, Bericht, p. 73 et seq.; Enquete, VI, pp. 375, 376; Deutsche Industrie-Zeitung, 1903, p. 141.
[7] Enquete, V, pp. 353, 354.
[8] Ibid., VI, p. 401.
[9] Enquete, S. V., Anlage 5.

ceptance in the autumn of the same year. There were the usual protracted negotiations, but finally all of those works whose adhesion was regarded as vital were secured by various compromises and concessions, except Krupp, Phœnix, and Westfaelische Stahlwerke. The agreement was ratified, nevertheless, on March 1, 1904, and almost immediately after Krupp joined in consideration of an enlarged quota. It was deemed essential, however, that Phœnix should enter the combination, and the newly formed syndicate applied all its commercial and financial influence, especially with the coal syndicate and the banks, to achieve its purpose, treating it as a " scab " concern. The management of Phœnix refused to join because they regarded the quota allotted to them as insufficient. The syndicate soon succeeded, chiefly through the influence of the great banks, in getting the shareholders of Phœnix to reverse the policy of the management. The vigorous and drastic measures which the syndicate took to accomplish its purpose excited a good deal of unfavorable criticism, but Phœnix has accepted the situation with a tolerably good grace.[1] As a matter of fact, its profits have shown a large increase.[2]

The Stahlwerksverband went into effect on March 1, 1904. It was concluded for a term ending on June 30, 1907; and in case there is no written objection to its continuance by any member before December 31, 1906, it is to stand until June 30, 1912. The character of this agreement, in respect to matters of general interest, is substantially as follows:[3]

The steelworks owners in the combination have an agreement whereby they obligate themselves to sell certain products to their central company, which is called the Stahlwerksverband. They agree further to meet in a general assembly to perform certain duties imposed by the agreement on that body, and also to submit to the directions of certain organs provided for in the agreement. The Stahlwerksverband, or central company, has on its part an agreement with the steelworks owners to purchase all of their products of the kinds specified, and to sell them again under the terms fixed by the agreement. The assembly of the steelworks owners elects an advisory council (Beirat), a body called the commission, and several subordinate commissions. The Stahlwerksverband has the usual statutory organs of a company; namely, supervisory council, managing directors (Vorstand), and general assembly. In the assembly of steelworks owners each member has 1 vote for every 10,000 tons quota of production. Some of the chief powers of this body are: (1) Election of Beirat and commission, (2) admission of new members, (3) determination of eventual restriction of quotas, (4) assent to sales or leases of plants by owners, (5) determination of penalties, (6) dissolution of agreement in case of reappearance of competition, and (7) provision for the inclusion of light-rolled products (B products) in syndicate sales. The Beirat is composed of members elected by the steelworks owners, each owner or group of owners having the right to elect one member for every 500,000 tons of quotas. The members of the Beirat must be chosen from the general assembly. The chief powers of the Beirat are: (1) Holding members of the combination to their agreement, (2) provision of rules regarding selling

[1] Cf. Geschaefts-Bericht Phœnix, 1903–4.
[2] Liefmann, Zur heutigen Lage der deutschen Grosseisenindustrie, Conrad's Jahrbuecher, Nov., 1905.
[3] This statement is based on the text of the agreement and a condensed exposition thereof submitted to the Government by the steel syndicate. Cf. Enquete, S. V., Anlage 5.

prices and terms of sale, (3) determination of increase of quotas for B products (see below), (4) determination of prices to be paid the steelworks owners, (5) disposition of reserves, (6) imposition of penalties, and (7) authorization to Vorstand to conclude agreements with competitors, etc. The third organ of the cartel is the commission, which is composed of eight members, and which has the following powers: (1) Classification of commodities, and (2) determination of "scale prices," comparative weights, and compensation for unusual specifications. Among the subordinate commissions the freight commission may be specially mentioned.

The selling company is called the "Stahlwerksverband, Aktiengesellschaft." It is located in Dusseldorf. The purpose of the company, as described in the by-laws, includes not only the purchase and sale of iron and steel products of all kinds, but also the acquisition and operation of all kinds of enterprises which are connected with the storage and transportation of iron and steel products. This company has a share capital of 400,000 marks in registered shares, which are not transferable without the consent of the general assembly. This capital is nominal in amount, because the company, although it does an enormous business,[1] is, in effect, only an agent of the steelworks owners, and sells for cash. The managing directors, or the Vorstand, conduct the business of the company, which has a very large and highly organized bureau. There is one department for accounting, statistics, taxation, freights, legal work, and for dealing with the public authorities, and a department for the sale of each of the three kinds of heavy rolled products.

The commodities covered by the agreement are specifically described. They include (1) the production of crude steel and forge iron; (2) the purchases of the same, and also of rolled half products and products enumerated under the two following specifications; (3) the production of half products, railway material, and structural steel; (4) the production of bars, rods, heavy and light sheets, tubes, railway axles, wheels and tires, forge pieces, cast-steel pieces, etc., so far as not made from material under 3 and 4, but directly from crude steel; and (5) the purchase from steelworks owners of commodities enumerated under 3, if they are for the plants of the steelworks owners and if the products thereof are sold by the cartel. The products enumerated under 1 and 3 are called A products and those under 4 are called B products. The Stahlwerksverband buys from the steelworks owners all the products which are offered for sale under the group A products and sells the same for the general account. For B products, on the other hand, the amount of production is fixed, but the sale is left to the steelworks owners individually or to such other cartels as they may belong to.

The quotas of the steelworks owners for the A products sold by the Stahlwerksverband are based on the amount of crude steel originally allotted to each by the agreement. This is called the principal quota and is divided into three "group quotas," namely, (1) crude steel and half products for direct sale, (2) railway material, and (3) structural steel. The group quotas are given in crude steel equivalents. It is the duty of the selling company to distribute the orders so that each concern shall have its share according to its quotas. There are various particular provisions in this connection.

[1] The sales in the first year, which did not comprise the whole output, were about $62,000,000. Cf. Iron and Coal Trades Review, Sept. 15, 1905.

If the total of the quotas is increased, they must all be increased in proportion, but if any concern is unable to maintain the increased output allotted to it the works which produce the excess are required to pay those which produce less a contribution of 5 marks per ton. Certain exchanges in quotas between different plants are allowed, with the consent of the Vorstand, and it is also provided that the Vorstand can make arrangements whereby certain works shall receive the bulk of orders for unusual specifications. Both these provisions aim at a greater economy of production by a division of labor. Each steelworks owner must fulfill orders allotted him, but in case they involve changes in his equipment compensation must be made. Where a concern uses its own products the Stahlwerksverband does not intervene as a buyer or seller.

The selling prices are fixed by the Vorstand under the guidance of rules laid down by the Beirat. The steelworks owners receive a minimum price (table price) originally, and afterwards what excess remains from the actual proceeds after deduction of the various expenses of administration, reserve, rebates, etc., incurred by the selling company. It is evident that the only way open for any particular concern to increase its profits is to reduce its costs of production. The table prices are for Thomas or basic Bessemer steel. Extra prices are allowed for commodities of superior grade, based on the extra proceeds of sale. A particular concern may receive higher prices than others if it is clear that its product commands a higher price in the market on account of quality. Important features of the price regulation are the freight-basing points. In the domestic trade the rules are as follows: For half products there are five bases, and the purchaser is quoted a price from the base nearest to his works; for railway material the base is the producing concern; for structural steel the base is Diedenhofen. In the foreign trade the basing point is the plant most favorably located for the purchaser. These rules represent partly compromises between different interests in the combination and partly attempts to economize freight charges. For the foreign trade, for example, each concern has the advantage or disadvantage resulting from its geographical situation with regard to the destination. In domestic railway material, on the other hand, geographical situation has no effect. Export bounties which are received from other cartels (e. g., coal syndicate or pig-iron syndicate) are distributed in such a manner that the steelworks owners who make the commodities for which export bounties are received get their share thereof, whether their products are exported or not.

For the B products the principal quota is the weight of crude steel required to make them. This is fixed for each concern in the original agreement. A concern can reduce its sale of B products at will. On the other hand, it can not increase its sales without leave from the Beirat. If a concern sells more than its allotted quota, it must pay 20 marks per ton for such excess sales.

The agreement provides for a "reserve," which is intended principally for the promotion of the export trade or for fighting competitors. It is acquired by deductions made from the proceeds of sale on the basis of the table prices. This assessment is fixed by the assembly of steelworks owners, with the limitation that it can not exceed 3 per cent of the sums paid under the table price payments. The steelworks owners are prohibited from selling or leasing their

plants without the consent of the assembly of steelworks owners, but this assent must be given if proper guaranties are provided for the fulfillment of cartel obligations. On the other hand, the steelworks owners are forbidden to buy or operate any outside plant that makes A or B products or to erect new plants for the production of those commodities. The Vorstand has the right to supervise all concerns, and to inspect plants, books, and papers, in order to insure due performance of obligations. Detailed provisions are made regarding fines and penalties. An arbitration court is established also, which (to the exclusion of the courts of law) has jurisdiction over disputes concerning the obligations of the parties to the agreement. In case new competition appears during the term of the cartel with a production amounting to 5 per cent of the cartel in A or B products, according to the opinion of the Beirat, the agreement may be canceled.

The original quotas of the members of the Stahlwerksverband for different products are shown in the following table:

Quotas in the Stahlwerksverband.

[From Jahrbuch für den Oberbergamtsbezirk Dortmund, 1901–1904.]

Company.	A products.				B products.						Grand total.
	Total.	Half products.	Railroad material.	Structural steel.	Total.	Bars, etc.	Rods.	Plates and sheets.	Tubes.	Railroad axles, etc.	
Deutscher Kaiser, Thyssen & Co.	285	50	133	102	419	253	29	93	43	[1] 3	704
Königs u. Laurahütte	140	(In B)	85	55	335	244	.....	80	31	10	475
Oberschlesische Friedenshütte											
De Wendel & Co.	248	65	53	131	212	129	24	58	.....	([2])	460
Fried. Krupp	234	90	144	.....	222	50	7	40	3	122	456
Hörder Verein	250	122	63	65	175	55	.....	103	.....	17	425
Gutehoffnungshütte	202	49	110	43	206	74	34	76	.....	22	408
Rombacher Hüttenwerke	341	217	48	76	38	38	.....	.....	.....	([3])	379
Rheinische Stahlwerke	251	111	100	40	134	66	.....	54	.....	13	378
Aachener Hütten Akt. V.	214	77	49	88	119	101	17	.....	.....	1	333
Dortmunder Union	229	59	114	56	104	90	.....	.....	.....	14	323
Eisen u. Stahlwerk Hoesch	152	38	63	51	169	102	20	41	.....	6	321
Bochumer Verein	143	55	87	[4] 1							
Ges. f. Stahlindustrie	73	18	52	2	91	15	.....	.....	.....	76	306
Burbacher Hütte	194	10	55	129	99	84	15	.....	.....	.....	293
Rochlingsche Werke, Volklingen	192	37	50	105	101	75	26	.....	.....	.....	293
Gebr. Stumm	172	25	62	85	121	95	26	.....	.....	([5])	293
Peiner Walzwerk	165	15	5	145	88	76	.....	.....	.....	.....	253
Lothringer Hüttenverein, Aumetz-Friede	210	128	27	55	30	30	.....	.....	.....	.....	240
A. G. Differdingen	149	71	23	55	70	30	40	.....	.....	.....	219
Eisenhütten Verein, Dudelingen	191	111	40	40	20	20	.....	.....	.....	.....	211
Dillinger Hüttenwerke	91	61	30	.....	97	.....	.....	88	.....	9	188
Maximilianshütte	109	17	54	38	55	33	.....	12	.....	.....	164
Hasper Eisen u. Stahlwerk	25	7	.....	17	76	41	35	.....	.....	.....	101
Eisenwerk Kraemer	40	.....	27	14	60	60	23	.....	.....	([6])	94
Georgs-Marien-Verein	62	([7])	61	.....	14	2	.....	.....	.....	12	75
Van der Zypen	23	6	[8] 1	16	47	28	.....	.....	.....	19	70
Phönix	166	50	116	.....	350	120	140	70	.....	21	416
Kattowitzer A. G.	25	.....	5	20	[9] 50	[9] 50	.....	.....	.....	.....	75
Sächsische Gusstahlfabrik	24	.....	24	.....	24	19	.....	.....	.....	5	48
Huldschinsky'sche Hüttenwerke	15	.....	5	10	.....	.....	.....	.....	.....	.....	15
Total	4,614	1,490	1,685	1,438	3,522	1,976	435	715	77	349	8,012

[1] 2,500. [2] 400. [3] 200. [4] 1,100. [5] 161. [6] 400. [7] 300. [8] 1,200. [9] That is, up to 50.

NOTE.—The figures in this table are given in thousands of metric tons to the nearest thousand, but for small quotas this does not indicate them with sufficient accuracy. For the small quotas thus affected the precise figures for the corresponding numbered references are:

The addition of the column for tubes does not check, which is presumably due to a typographical error in the authority quoted.

In addition to the quotas given above, certain concerns have the privilege of purchasing a fixed amount of steel. The only important allowance is that of Phœnix, which amounts to 100,000 tons. Besides this certain other works are to receive in the future certain additions to their quotas. Here, again, there is only one case in which a considerable increase is provided for; namely, Krupp, which by April, 1907, will be allowed 706,000 tons for its total quota.[1] Taking the total quotas, the geographical distribution is as follows: For the Rhenish-Westphalian works, 54 per cent; for the works in the Saar, Lorraine, and Luxemburg, 32 per cent; for upper Silesia, 7 per cent; and the remainder (7 per cent) in various parts of Germany.[2]

The proportion of the production of the Stahlwerksverband to the total production of Germany is estimated at about 90 per cent.[3] All the important steel works which were deemed to come within the scheme of organization except one—the Westfälische Stahlwerke—are included in the agreement. Several works have been added since then. There does not seem to be any immediate likelihood of new competition appearing. To start a new first-class steel works with an independent supply of coal and coke would cost, it is said, 50,000,000 marks.[4] Voelcker says, "The German Stahlwerksverband represents for the cartels in the iron industry, not the keystone of the arch, but rather the foundation of a new grouping."[5] The chief purposes of the cartel are officially stated to be (1) the maintenance of the domestic market, (2) the full occupation of the works, (3) the simplification of working programs of the works, and (4) the elimination of competition among German works in foreign markets.[6] Adolf kirdorf was elected as the first head of the syndicate.[7]

It is difficult to estimate the capital value of the concerns in the steel syndicate. They include, of course, besides, steel mills, coal mines, coke works, blast furnaces, etc. If the share capital at the market quotation is taken, and to this is added the outstanding funded debt, a fairly representative figure is obtained. On this basis, using figures chiefly for 1904, the following computation has been made from data in the Dortmunder Jahrbuch and Saling's Boersenpapiere. For 20 concerns in the syndicate, embracing 63 per cent of the total quotas for A and B products, the total capital value is computed to be about 958,270,000 marks. If the same proportion be applied to the aggregate quotas of the syndicated concerns, the total capital value would amount to 1,521,000,000 marks, or about $362,000,000.[8]

The steel syndicate aimed at a national organization of the industry, and several concerns in upper Silesia were included in the combination. The steel producers of that region, however, went further, and established a local organization, which in some respects was more complete than the steel syndicate. The distance of upper Silesia from accessible markets makes it necessary for the steel works to manufacture the finer products which pay better for distant ship-

[1] Jahrb. f. d. O. Dortmund. 1901–1904, pp. 720, 721.
[2] Ibid., p. 722.
[3] Voelcker, "L'État actuel de l'industrie sidérugique allemande et sa organisation," Revue économique internationale, Décembre, 1904, p. 742.
[4] Enquete, S. V., p. 16.
[5] Voelcker, Revue écon., Décembre, 1904, p. 744.
[6] Enquete, S. V., p. 37.
[7] Stahl u. Eisen, 1904, p. 331.
[8] Jutzi, taking the par value of the capital stock, the reserves, and the bonded debts, estimates the total capital invested at 1,031,500,000 to 1,041,500,000 marks. Die deutsche Montanindustrie auf dem Wege zum Trust, Jena, 1905, p. 31.

ment. The German rolling-mill cartel, which was dissolved in the early nineties, left behind it in Silesia a local cartel which included all but one concern, and this organization lasted down to the end of 1904. It was, however, inadequate, and hence some of the Silesian works joined the steel syndicate. This led to the organization of a local steel combination [1] on December 16, 1904, which went into effect at the beginning of 1905. This was called the Oberschlesische Stahlwerksverband G. m. b. H.[2] It includes the eight steel works of upper Silesia, one in Berlin, and one in Danzig. The term of the agreement is fixed from January 1, 1905, to June 30, 1907, although an earlier dissolution was possible under certain contingencies. The agreement in its general form is modeled on that of the greater steel syndicate, but it differs in one very important particular. As there is little of crude steel or heavy-rolled products made for sale, these are not syndicated, but the light-rolled products are carteled instead. Some of these light-rolled products are sold by the syndicate, but the others are simply regulated as to output.[3] There were some difficulties in the beginning which threatened to break it up, but these were settled,[4] and soon after the five remaining steel works in upper Silesia became members of the larger or " German " steel syndicate.[5]

One of the characteristic developments of industrial combinations has been the suppression of the middlemen. The steel syndicate furnishes some striking illustrations of this fact. Before the formation of the syndicate the dealers in structural steel had been organized in five groups by the beam syndicate,[6] and these groups were recognized by the steel syndicate after it was established. The members of these groups of dealers agree to sell according to certain mimimum prices and conditions, and each group has a distinct territory. Similar organizations have been formed in Switzerland, Denmark, Sweden, and Norway.[7] The steel syndicate declares that its special purpose in promoting and recognizing them has been to obtain a better view of the market and to exercise a greater control over it.[8] The dealers have submitted to the inevitable with what grace they could, but they complain that the profit (a commission practically) is too small.[9] For the other products, which the syndicate sells directly (half products and railway material), the conditions of trade are different; i. e., they are both sold direct to the consumers in the domestic market and also to some extent abroad. In the most important foreign market of the syndicate (London) the former agents of the various companies have been organized into a limited liability company, over which the syndicate has taken pains to secure complete control, both of personnel and stockholders.[10] Similar agencies have been established to represent the syndicate in Amsterdam and at Brussels. Further, in order to get a better view of the English market, the syndicate has stopped selling f. o. b.[11] continental ports and sells instead

[1] Cf. Enquete, S. V., Anlage 4.
[2] G. m. b. H. is the abbreviation for " company with limited liability."
[3] Enquete, S. V., Anlage 2; Deutsche Industrie-Zeitung, Dec. 30, 1904, p. 475.
[4] Cf. Kartell-Rundschau, 1905, pp. 270, 374, 428.
[5] Ibid., p. 490.
[6] Deutsche Industrie-Zeitung, Jan. 22, 1904, p. 34.
[7] Enquete, S. V., Anlage 5, p. 44; Deutsche Industrie-Zeitung, June 17, 1904, pp. 226, 227.
[8] Enquete, S. V., Anlage 5, p. 44.
[9] Ibid., p. 22.
[10] Deutsche Industrie-Zeitung, May 27, 1904, p. 198; Kartell-Rundschau, 1904, p. 532.
[11] " Free on board " at port of shipment.

c. i. f. English ports.[1] The syndicate has even introduced sales with delivery at works to the English consumer.[2]

It would be difficult to appreciate properly the policy of the steel syndicate, especially on account of the brief term of its existence, without some reference to the previous movement of production and prices. Before speaking, however, of any particular feature it is desirable to note a few of the leading facts regarding the steel market in recent years. The period since 1895 may be approximately described as follows: From 1895 to 1900 there was a great boom, which culminated in a short period of high prices in 1899–1900, and terminated in a crisis in the latter year, which brought on a general and very serious collapse. A period of depression followed, which may be said to cover the years 1901 to 1902.[3] During 1903 improvement was evident, and since then the steel trade has been active, if not, generally speaking, remarkably profitable. The last half of 1905 has brought an extraordinary revival of activity.

The raw-material cartels had established themselves at the beginning of the period and occupied a favorable position throughout. The cartels which existed in finished products were generally more loosely formed, and their policy, both in production and prices, was less conservative. When the depression came they were in a weak position and were more eager to form combinations. The raw-material cartels had, however, the advantage and succeeded in shifting the greater part of the losses occasioned by the hard times onto the manufacturing branches. The former were able, that is, to maintain their prices to a large extent, while the latter had to reduce theirs and to accept greatly diminished margins. The general policy of all producers was to keep up their production and to sell abroad at any cost what they could not find a market for at home. The following table shows the movement of production in some leading lines:

Production of pig iron and certain iron manufactures in the German Customs Union, 1895–1904.

[In thousands of tons.]

Year.	(1) Pig iron.	(2) Cast-iron wares, second casting.[4]	(3) Half products (from converter or Siemens-Martin) for sale.	(4) Rails.	(5) Finished products (from converter or Siemens-Martin).	(6) Wire rods (from converter or Siemens-Martin).	(7) Tin plate.
1895	5,465	1,146	1,132	495	2,830	502	31
1896	6,373	1,355	1,358	583	3,462	549	34
1897	6,881	1,440	1,273	799	3,863	513	31
1898	7,313	1,573	1,428	819	4,353	476	35
1899	8,143	[5] 1,758	1,508	808	4,820	512	34
1900	8,521	1,785	1,536	922	4,757	457	31
1901	7,880	1,503	1,648	849	4,486	523	36
1902	8,530	1,506	2,230	945	5,101	574	42
1903	10,018	1,704	2,412	1,080	[6] 5,802	.....	45
1904	10,058	1,987	[7] 2,374	.....	5,976	.....	48

[1] "Cost, insurance, and freight;" i. e., price delivered at port of destination.
[2] Enquete, S. V., Anlage 5, p. 43.
[3] Cf. Walker, pp. 59–77.
[4] Excluding trifling production in Luxemburg, except in 1904.
[5] Obvious error in original corrected.
[6] Excluding 135,699 tons in Luxemburg.
[7] Jahrb. f. d. O. Dortmund, 1901–1904, p. 728.

NOTE.—Columns 1, 2, and 5, Jahrb. f. d. O. Dortmund, 1901–1904, p. 728; columns 3 and 4, Enquet, S. V., Anlage 7; column 6, Enquete, VIII, p. 717; column 7, Enquete, IX, p. 161.

An inspection of this table shows a great increase between 1895 and 1900 for all the products given, except rods and tin plate. The decrease in production in 1901 is equally general, with a slight recovery in 1902. With 1903 production quite generally forged ahead of previous figures, and has continued to increase since. The steadiness with which production has increased in Germany is remarkable. Voelcker states that the normal increase in the demand for steel in Germany is about 420,000 tons per annum.[1] The pig-iron production in Germany during the nine years ending 1904 increased at an average rate of 510,000 tons per annum. The production of pig iron in 1904 showed practically no increase over 1903, while half-products declined slightly.

The production policy of the steel syndicate during the period of two years since its establishment has not been characterized by any extraordinary features. The syndicate has published the statistics of production only for A products. The shipments of these products (reckoned in crude steel weight) were as follows:

	Tons.
Mar. 1, 1904, to Feb. 28, 1905 (12 months)	4,533,805
Mar. 1, 1905, to Dec. 31, 1905 (10 months)	4,517,512

The production of the first business year was about 1.4 per cent less than the quotas prevailing for that period. The production for the first eight months of the second business year, however, was about 9.9 per cent greater than the prevailing quotas for that period.[2] For the chief subdivisions of A products the shipments, reckoned in crude steel weights, were as follows:[3]

Period.	Half products.	Railway material.	Structural steel.
	Tons.	*Tons.*	*Tons.*
Mar. 1, 1904, to Feb. 28, 1905 (12 months)	1,599,598	1,394,623	1,529,435
Mar. 1, 1905, to Dec. 31, 1905 (10 months)	1,661,649	1,399,960	1,455,903

Comparing the same periods, the shipments during the first 10 months in the second year exceeded the shipments during the first 10 months of the first year as follows: For all A products by 18 per cent, for half products by 23 per cent, for railway material by 20.4 per cent, and for structural steel by 11 per cent. The production policy of the syndicate as indicated by these figures shows a decided tendency toward expansion. It is instructive to compare the policy of the steel syndicate with the half-products syndicate which preceded it. The following figures for half products are in finished weights:[4]

	Tons.
Mar. 1, 1902, to Feb. 28, 1903	1,460,637
Mar. 1, 1903, to Feb. 28, 1904	1,449,698
Mar. 1, 1904, to Feb. 28, 1905	1,411,903

The sales in 1904–5, under the régime of the steel syndicate, were less than those of the half-products syndicate. This reduction came

[1] Voelcker, Revue écon., Décembre, 1904, p. 732.
[2] Cf. Enquete, S. V., Anlage 5; Glückauf, 1906, p. 82; Stahl u. Eisen, 1905, p. 1385.
[3] Cf. Enquete, S. V., Anlage 5; Glückauf, 1906, p. 82.
[4] Enquete, S. V., Anlage 5.

out of the export trade, and not out of the domestic supply, as is shown by the following table of domestic sales:[1]

	Tons.
1902–3	737,621
1903–4	844,629
1904–5	1,018,277

The data regarding the movement of B products are very meager. The syndicate does not generally give out these figures. Kollmann, however, gives a statement of the shipments of B products during the first year of operation, together with the quotas, as follows:[2]

B products.	Shipments.	Quotas.
	Tons.	*Tons.*
Bars	1,718,211	1,847,622
Rods	371,713	434,230
Sheets	682,889	714,927
Axles	306,599	351,546
Tubes	48,226	53,400

At the end of March, 1905, the syndicate voted to increase the quotas for bars and sheets by 5 per cent. This increase became permanent on July 1, 1905.[3] The total allotment for A products on July 1, 1905, was 4,864,485 tons, as compared with 4,614,225 tons shortly after the formation of the combination. The addition of five more concerns in upper Silesia increased the total to 4,900,000 tons.[4] In January, 1906, the quotas for bars and sheets were increased again by 5 per cent, while the quotas for rods were increased 10 per cent. The total increase of quotas over the original quotas are as follows: Bars and rods, 10 per cent; sheets, 15 per cent.[5]

The movement of prices in the steel trade has been affected in an important degree by the existence of cartels for the various products, but their influence on prices has been very unequal, and none of them ever had complete mastery of the situation. The following table shows the general course of development for the chief raw materials and the chief manufactured products during recent years:

Prices of iron, iron products, and raw materials.

[In marks.]

Year.	(1) Minette iron ore, average per ton.	(2) Blast-furnace coke, average per ton.	(3) "Fett" coal, mine run, average per ton.	(4) Thomas pig iron (Westphalia), average per ton.
1895	3.30	11.00	8.00	45.63
1896	3.30	12.02	8.25	56.58
1897	3.40	13.87	8.85	56.50
1898	3.55	14.00	9.08	60.00
1899	3.55	14.37	9.37	70.25
1900	3.90	21.29	10.25	90.20–71.80
1901	4.40	22.00	10.25	90.20
1902	2.85	15.00	9.60	57.13
1903	.....	15.00	9.38	57.21
1904	.....	15.00	9.38	57.80

[1] Enquete, S. V., Anlage 5.
[2] Kollmann, p. 12.
[3] Ibid., p. 31; cf. Kartell-Rundschau, 1905, pp. 193, 194, 367–372.
[4] Iron and Coal Trades Review, Dec. 15, 1905, p. 2022.
[5] Deutsche Industrie-Zeitung, Jan. 26, 1906, p. 45.

Prices of iron, iron products, and raw materials—Continued.

[In marks.]

Year.	(5) Mill iron (Silesia), average per ton.	(6) Thomas ingots, crude.		(7) Thomas billets, January per ton.	(8) Rails, average per ton.
		January per ton.	July per ton.		
1895	.....	.....	.....	.....	.....
1896	57.5	72.00	75.00	81	.....
1897	61.7	81.00	84.00	90	103–105
1898	61.6	83.00	83.00	93	108
1899	75.7	87.00	105.00	97	108–127
1900	90.7	117.00	125.00	127	130–140
1901	66.5	97.00	78.00	107	100–120
1902	60.8	75.00	82.50	90	100–105
1903	.....	77.50	77.50	90	105–130
1904	.....	77.50	77.50	90	.....

Year.	(9) Beams.		(10) Bars.	
	January per ton.	July per ton.	January per ton.	July per ton.
1895	.....	.....	95.00	95.00
1896	90	98.00	105.00	120.00
1897	103	105.00	130.00	130.00
1898	108	108.00	117.50	120.00
1899	108	120.00	132.50	172.50
1900	130	140.00	185.00	190.00
1901	120	112.50	120.00	105.00
1902	100	105.00	105.00	112.50
1903	105	105.00	105.00	110.00
1904	105	105.00	.....	.....

Year.	(11) Rods.		(12) Boiler plate, average per ton.	(13) Light sheets, average per ton.	(14) Tin plate, average per ton.
	January per ton.	July per ton.			
1895	93.00	93.00	152.50	121.67–128.69	292.3
1896	107.00	112.50	171.66	142.08–146.25	301.2
1897	122.50	112.50	179.79	127.08–133.75	292.9
1898	123.00	123.00	186.25	127.10	289.2
1899	125.00	150.00	195.00	184.00	329.4
1900	185.00	185.00	210.42	197.50	398.0
1901	150.00	135.00	180.00	160.00	340.6
1902	125.00	130.00	158.33	140.17	358.0
1903	120.00	120.00	150.00	135.88	331.3
1904	112.50	.....	151.00	125.00	.....

NOTE.—Column 1, Bosselmann, pp. 37, 38, 42; columns 2, 3, 4, 12, and 13, *Jahrbuch f. d. O. Dortmund*, 1901–1904, pp. 696, 733 (iron prices in 1901 nominal); column 5, Kuh, p. 222; columns 6, 7, 8, and 9, *Enquete, S. V.*, Anlage 7 (rails, domestic prices at Düsseldorf); column 10, Voeleker, *Bericht*, pp. 130, 131; column 11, *Enquete*, VIII, pp. 742–747; column 14, *Enquete*, IX, p. 182.

This table does not present, of course, the details of price movements, and, in general, it does not show the extremes. For example, pig iron was quoted as low as 45 marks in 1901.[1] In Silesia sheets were from 205 to 215 marks at the beginning of 1900, and from 125 to 135 marks at the end of the year.[2] To a very considerable extent, also, rebates were granted on the prices quoted, and even on the ma-

[1] Cf. J.-B. d. Handelskammer Oppeln, 1901, p. 30; Wieser, "Die rheinisch-westfälische Eisenindustrie in der gegenwärtige Krisis," Jahrb. f. Gesetz. Verwalt. u. Volksw., Jahrg. 1902, p. 304.

[2] J.-B. d. Handelskammer Oppeln, 1900, p. 29.

terial previously sold. Most of the coke was sold for 1900 and 1901 on two-year contracts at 17 marks; and, though the market quotations ran higher, very little was bought on that basis.

An inspection of the price table shows that there was a general advance in prices from 1895 to 1900. The crisis developed in the middle of the latter year. The advances appear quite as early for the manufactured products as for the raw materials, and, on the whole, it may be safely asserted that they were the result of general economic influences, and that there was no causal relation between them. Dr. Voelcker, in his impartial and judicious summary of the situation, declares that from 1895 to 1898 the cartels followed a moderate price policy, but that from 1899 to 1901 the reverse in general was true.[1] The uncarteled lines got high prices in 1899 and 1900, owing to the favorable market, and the carteled lines were unable to resist the temptation to put up their prices to an immoderate height also. The fall in prices, after the depression set in, was relatively greater for the manufactured products than for raw materials or half products, and it came sooner. This was partly due to the fact that the raw material cartels took advantage of their strong position to make their customers take their supplies on long-term contracts; but the latter were also to blame, as they were overanxious to get supplies, not suspecting that a crisis was imminent.[2] The two chief offenders were the coke syndicate and the pig iron syndicate.[3] The steel syndicate, at the beginning of its operations, established a scale of domestic prices for certain standard products of basic steel. The most important prices per ton were as follows:[4]

	Marks.
Crude ingots	77.50
Rolled ingots (blooms)	82.50
Billets	90.00
Sheet bars	92.50
Structural iron	105.00–108.00
Rails	112.00
Ties	105.00

These prices prevailed without essential modification until November, 1905. A comparison of these prices with those of the years immediately preceding (1902 and 1903) and the years before the boom acquired much headway (e. g., 1896 and 1897) tends to show that the price policy of the syndicate has been moderate. English reports announce, however, a general 5-shilling advance for half products of the steel syndicate in November, 1905, and predict a further rise.[5] These prices look rather high. The price policy of the syndicate, as far as the domestic market is concerned, was enunciated by one of its directors, Dr. Voelcker, as follows: "We do not intend to allow our prices to change continually with the fluctuations of the market. We do not desire, namely, to raise our prices suddenly and rapidly if the conditions are very favorable; we do not wish, on the other hand, to reduce our prices in bad times, with a declining demand; we desire to keep the middle course."[6]

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[1] Voelcker, Bericht, p. 23. Cf. Vogelstein, S. d. V. f. S.-P., p. 86. Dr. Voelcker at that time was in the Government service, but since then he has become a director of the steel syndicate.

[2] Voelcker, Bericht, p. 255.

[3] Cf. Calwer, Handel u. Wandel, 1901, pp. 31, 32; Voelcker, Bericht, pp. 38–45.

[4] Enquete, S. V., Anlagen 3, 5, u. 7. Cf. Kollmann, p. 26. Kollmann gives the price of rails at 118 marks.

[5] Iron and Coal Trades Review, Nov. 17, 1905, p. 1687.

[6] Enquete, S. V., p. 3.

The syndicate does not fix the prices of light rolled products. The price movement for some of the principal lines is shown in the following table:

Prices of light-rolled products.[1]

[In marks.]

Date.	Bar steel (converter).	Hoops.	Boiler plate (converter).	Light sheets (converter).	Rods (converter).
1904					
Jan. 1	107–110	122.50–127.50	150	115	112.50–117.50
Apr. 1	112	125 –130	155	115	112.50–117.50
July 1	112–115	122.50–127.50	150	115	120
Oct. 1	110–112	122.50–127.50	150	115	112.50–117.50
1905.					
Jan. 1	106–108	122.50–127.50	150–155	115	112.50–117,50
Apr. 1	110–115	123	150–155	120 –122.50	125
July 1	110	123 –125	.....	115 –120	125
Oct. 1	110–112	125 –127.50	130	112 –120	125
Dec. 1	112–115	125 –127.50	130–135	122.50–125	127.50
1906.					
Jan. 1	115–118	130 –132.50	130–135	126 –130	132.50

[1] Stahl u. Eisen, 1905, p. 1216.

A distinct upward movement is observable in the last half of 1905, to which boiler plate forms an exception. This corresponded to an increase in consumption, especially in the domestic market.[1] Comparing these prices with those of preceding years, the prices of bar steel were unduly low; and the same is true also for light sheets and for rods in 1904. In 1905 the prices of light sheets moved erratically and were on the whole too low, while the prices of rods advanced to a reasonably good basis. The position of steel bars became tolerably good only at the beginning of the year 1906.

The burning question of the steel trade since the crisis has been the position of the straight-rolling mills (reine Walzwerke) with reference to the mixed-steel works (gemischten Werke). The latter are the great works which generally have their own raw materials and combine the manufacture of heavy and light steel products. Though for a time in the seventies and eighties this integration in industry fell into some disfavor,[2] it is accepted to-day in Germany, as elsewhere, as the necessary basis for large and successful operations. Of the 31 original members of the steel syndicate, 17 produce coal, 25 iron ore, and 27 pig iron.[3] These large steel works produce also the bulk of the light-rolled products. For example, they produce about three-fourths of the bar steel of Germany.[4] Probably the straight-rolling mills do not produce over one-seventh. The straight-rolling mills are almost entirely dependent on the large steel works for their material, and they are at a disadvantage both in the manufacture and sale of light-rolled products. The superiority of the steel works is based on (1) technical superiority, (2) economy in general expenses, and (3) economy in freights. Their technical superiority relates almost entirely to standard commodities, produced

[1] Glückauf.
[2] Cf. Bosselmann, p. 54; Stillich, Eisen- und Stahlindustrie, Berlin, 1904, pp. 40, 160, 162; Heymann, pp. 145–148; Eisen-Enquete-Kommission, 1878, p. 4.
[3] Enquete, S. V., Anlage 4.
[4] Kartell-Rundschau, 1905, pp. 369, 490–492.

in great quantities, and is found chiefly in the economy of fuel and in the economy of construction and operation of plant. Considering these economies only so far as they relate to the rolling of the light products, the straight-rolling mills concede that the large works have an advantage of from 4 to 6 marks per ton in rolling crude steel.[1] It is principally a question of saving heat by direct rolling. It is also obvious that the construction of a plant for a continuous and uninterrupted process is more economical. This factor, as well as that of saving in general expenses, which is equally obvious, is difficult to estimate. The saving in freight is estimated to average 1½ marks per ton.[2] Not all the large steel works enjoy these advantages, as they have not all been rationally located and constructed. The commercial advantage of the mixed work rests partly on their commercial and financial preponderance and partly on their influence over prices and production.

The complaints of the straight rolling mills may be concisely formulated as follows: That the prices of half products are too high in comparison with the prices of light rolled products; that the steel works, although they control the export, have been dumping half products; that the export prices are excessively low; and that the export bounties are insufficient to enable the straight rolling mills to compete with foreign mills using German half products.[3] Regarding the price policy in the domestic markets, extensive comparisons might be made: but it is sufficient to cite that of Springmann, a leader of the straight rolling-mill group, who divides the decade 1895 to 1905 into two five-year periods—a period of prosperity and a period of depression. The margin between crude ingots and bar steel in the first period was 49.75 marks and in the second 29.54 marks. He compares these with the margins between crude ingots and beams, which for the same periods were, respectively, 21.15 marks and 26.60 marks, and he claims that the steadiness of the latter was due to the fact that the steel-works combinations controlled the prices of beams. A representative of the steel works claimed, on the other hand, that the margins for beams were reasonable, as well as the margin for bars during the second period, but that the margins for bars had been too high in the first period.[4] On a previous occasion Springmann claimed that a margin of 37.50 marks was necessary between rolled ingots (blooms) and bar steel, while A. Kirdorf (head of the half-products syndicate) asserted that 22.50 marks was sufficient.[5] The truth here probably lies near the mean. The rolling mills seem to make a better prima facie case in the margins for rods. They cite the cost of rolling rods, as given by the half-products syndicate, as 21 marks. The price of billets was 90 marks, which, together with 21 marks for rolling and 1.50 marks for freight, makes a total of 112.50 marks. The prevailing price for rods, including domestic and export trade, and deducting bounties, was 108.21 marks from January to March, 1904, and 107.71 marks from April to June, 1904. They were compelled, therefore, to sell at 4.29 marks and 4.79 marks, respectively, below a fair cost of production.[6] The representatives of

[1] Enquete, S. V., Anlage 3.
[2] Cf. ibid., p. 12, Anlage 3.
[3] Cf. Denkschrift zur Lage der Halbzeug kaufenden Walzwerke im letzten Vierteljahre 1904: Enquete, S. V., Anlage 3.
[4] Enquete, S. V., p. 23.
[5] Cf. Enquete, VI, p. 410.
[6] Ibid., S. V., Anlage 3.

the straight rolling mills claimed that the steel works made exorbitant profits on half products,[1] but A. Kirdorf denied it and offered to prove it from the books of his company. He said that there were great differences in cost and that the steelworks that produced at a disadvantage had as good a claim to have prices adjusted to make their business profitable as the straight rolling mills.[2]

This conflict of interest has not appeared in Silesia, which is due partly to technical conditions and partly to the organization of the industry. A sliding scale has been established between rolled products and pig iron which automatically adjusts the margin.[3]

The steel syndicate is incomplete in two important points: (1) The open-hearth mills are not in the combination; (2) the B-products are not syndicated. The bar steel production from the open-hearth furnaces is said to be 10 per cent of the total.[4] The steel syndicate has made strenuous efforts to bring them in, but without success. It is said that they demand exorbitant quotas.[5] It has also been active in trying to bring about some modus vivendi for the straight rolling mills, which can hardly be brought into the syndicate before the open-hearth furnaces. Various schemes have been proposed. Under their present disadvantageous position they have a relatively depreciated value. If they were admitted into the syndicate with reasonable quotas, they would unquestionably be coveted by the large mills, but it is difficult to see how the syndicate works could be induced to give away valuable privileges without a consideration. The straight rolling mills have proposed a sliding scale, but the proposed margins are high.[6] Finally, the syndicate has made a counter proposal that the straight rolling mills buy half products at ruling prices, and sell the rolled products to the syndicate with a fair allowance for the cost of rolling.[7] The syndicate wished to get control of the sale. The syndicate has made some effort to help bring about a separate cartell in bar steel, but the game of cartell politics is complicated, and there were some reasons for going slowly, e. g., securing first the adhesion of the other Silesian mills and the open-hearth furnaces.[8] The straight rolling mills, according to admissions from their own side, have been quite immoderate in their demands.[9] Accusations have not been wanting, however, that the syndicate is really aiming to destroy the straight rolling mills, and to get control of the finished products.[10] though this is emphatically denied.[11]

The complaints of the straight rolling mills regarding the export policy of the steel syndicate concerns a matter of much greater interest to German industry and the world at large. The imports of steel are of minor consequence, although in the boom period, especially in 1899 and 1900, there was a considerable importation of pig iron and half products.[12] The exports are shown in the following table:

[1] Cf. Enquete, S. V., pp. 403, 511, 512.
[2] Ibid., VI, pp. 396, 409, 418.
[3] Cf. Heymann, p. 313.
[4] Tageblatt, Aug. 17, 1905.
[5] Cf. Deutsche Industrie-Zeitung, Mar. 17, 1905; Kartell-undschau, 1905, p. 144.
[6] Enquete, S. V., Anlage 8.
[7] Kartell-Rundschau, 1905, pp. 490–492.
[8] Cf. Ibid., p. 427; Enquete, S. V., p. 26.
[9] Cf. Enquete, S. V., p. 26.
[10] Deutsche Metall-Industrie-Zeitung, Jan. 7, 1905.
[11] Enquete, S. V., p. 3 (Voelcker).
[12] Jahrb. f. d. O. Dortmund, 1901–4, p. 734.

Exports of the German Customs Union.

[In thousands of tons.]

Years.	Pig iron.[1]	Half products.[1]	Finished products.[2]
1898	272	35	1,312
1899	235	23	1,244
1900	191	34	1,355
1901	304	202	1,815
1902	516	636	2,127
1903	418	638	2,281
1904	226	396	2,022

[1] Voelcker, Bericht, p. 29. [2] Jahrb. f. d. O. Dortmund, 1901–1904, p. 734.

The domestic demand was so keen in 1899 and 1900 that the exports of pig iron declined. It is remarkable that finished products declined also. With the beginning of the depression in the domestic markets producers were led to increase their exports. This is especially marked for pig iron in 1901 and for half products in 1902. The exports of finished products do not show such a decided increase. The straight rolling mills complained that the steel works were dumping their production in England, both during the régime of the half-products syndicate and since the steel syndicate was formed. In answer to this charge the steel syndicate submitted the following table for domestic and export sales of half products (finished weights):[2]

Years.	Domestic sales.		Export sales.	
	Quantity.	Per cent.	Quantity.	Per cent.
	Tons.		*Tons.*	
1902–3	737,121	50.50	723,016	47.97
1903–4	844,629	58.26	605,069	41.47
1904–5	1,018,277	72.12	393,626	27.88

The sales in 1904–5 were made during the régime of the steel syndicate. The question of dumping applies only to half products, so far as other branches of the steel industry are affected, because the other A products—namely, rails and beams, etc.—are necessarily sold to the consumers in the countries where they are used. National interest, however, is almost equally opposed to dumping these products. The policy of the steel syndicate in the sale of all A products for the first year of its activity (1904–5) is shown in the following statement (crude steel weights):[1]

Commodity.	Domestic sales.		Export sales.	
	Quantity.	Per cent.	Quantity.	Per cent.
	Tons.		*Tons.*	
Half products	1,154,910	72.20	444,688	27.80
Railway material	1,049,454	75.25	345,169	24.75
Structural iron	1,174,147	76.77	355,288	23.23

[1] Enquete, S. V., Anlage 5.

The steel syndicate makes unquestionably a favorable showing. It also points out that, though the export of manufactures of half products has declined somewhat, the decline has not been so great as the decline of half products.[1] It is improbable that the straight rolling mills could have so increased their output as to have absorbed all the half products exported, if they had been given the chance.[2] The straight rolling mills complain particularly of the exports to England. Although the steel syndicate could show from the official trade statistics there had been a heavy decline in this particular direction, it was well known that in former years a good deal of the English export was reshipped to America, and so a real decline for the English market was not proven. The best argument of the syndicate was that the German half products did not constitute more than 3.8 per cent of the total English consumption.[3]

The complaints against the export policy of the steel works were directed against prices quite as much as quantities. Low export prices have always prevailed in the German iron and steel trade.[4] The report of the German steel companies frequently admit it.[5] There is no question that the export prices of half products have been very low, but various circumstances must be taken into account in estimating the effects. A good deal depends at what point of delivery or sale the prices are compared, and how the freight is reckoned in making comparisons. The rolling mills are apt to compare prices at the producing mills, while the steelworks prefer to compare the prices delivered at the respective places of consumption.[6] Where export bounties are allowed, they must of course be counted in. In order to discuss this question satisfactorily, it would be necessary to know what the export prices really were, for what quantities they applied, and what proportions of the products made therefrom went to different markets where they really met German competition. The theoretical considerations are intricate, while the information as to the facts is totally inadequate, so that it is impossible to make a very confident statement about the real effects of the low export prices. Lippert, a representative of the straight rolling mills, quoted export prices at Antwerp, f. o. b., at 68 marks for ingots, 72 marks for billets, and 72.50 marks for sheet bars as compared with domestic prices of 82.50 marks, 90 marks, and 92.50 marks, respectively.[7] These were emphatically declared by the representatives to be exceptional, if made in fact; and that this was before the present syndicate was established. Schaltenbrand, one of the directors, asserted that

[1] Enquete, S. V., Anlage 5.
[2] Cf. Ibid., pp. 13, 14, 15, 16.
[3] Ibid. Anlagen 3 u. 5.
[4] Eisen Enquete, 1878, pp. 13, 44, 56, 72, etc.; J.-B. Handelskammer, Breslau, 1892, p. 160; Wieser, p. 318; Martin, p. 183; Raffalovich, Trusts, Cartels, et Syndicats, Paris, 1903, p. 21, note, etc.
[5] Cf. e. g., G-B. Deutsch-Luxemburgische A-G. 1902–3: "Kaum die Selbstkosten gedeckt werden konnten:" G-B. Phoenix, 1901–2: "die Preise äusserst mässig sind, und einen Gewinn ueberhaupt nicht uebrig lassen."
[6] Two calculations may be given for illustration, which were offered at the enquete concerning the half-products syndicate. A. Kirdorf gave the following example: Export price for rolled ingots at works to English mills, 76 marks; freight to seacoast, 3 marks; sea freight, 6 marks; total cost, c. i. f. England, 85 marks. Domestic price delivered, 84 marks; export bounty, 10 marks; total cost delivered, 74 marks. Kirdorf gured for each concern delivered. The German concern which exported its finished product to England still had freight to pay. Springmann made his calculation as follows: Export price for billets, f. o. b. Antwerp, 72 marks; freight from Dortmund (producing works), 5.70 marks; net price at works, 66 marks, approximately. Domestic price, 90 marks; export bounty, 10 marks; net price at works, 80 marks. Springmann figured the price at producing works. Enquete, VI., pp. 426, 430.
[7] Enquete, S. V., p. 17.

the export was necessary, and they had to take what they could get. He admitted that the export prices were a little lower than the domestic prices, but he claimed that, if account were taken of the export bounties and other conditions, the domestic mills received the more favorable terms. He also quoted the real average proceeds from the export trade of the steel syndicate for ingots, billets, and sheet bars; but these figures were not printed in the published protocol.[1] Complaints against the steelworks have also been made with respect to the prices at which they sold finished products abroad in competition with the domestic consumers of their half products.[2]

Space does not permit going into further details in regard to this question. It has become chiefly of historical interest in consequence of the recent vigorous hausse in the German steel market, which has resulted in the advance of prices all around and brought the export prices, according to market reports, very close to the domestic prices.[3]

In order to equalize the disadvantage at which the German export industry has been placed with respect to manufactured products in consequence of the low export prices of the raw material cartels, export bounties have been paid from time to time by the latter to such of their customers as were engaged in the export trade. This practice extends back to 1891[4] in the iron trade, and perhaps earlier. The significance of the export bounty system naturally became much greater in the period of depression which followed the crisis of 1900, and it was considerably extended. In 1902 it was systematically organized by the establishment of an "export accounting office" (Abrechnungsstelle für die Ausfuhr), in which the coal, coke, pig-iron, half products, and beam cartels united to pay export bounties to each other and to the mills which made and exported the finer products. These bounties were based on a calculation of the amount of raw material consumed in making the finished product.[5] The general principles established for the payment of these bounties were, first, that they were payable only to members of a cartel, and second, that the raw materials consumed must be supplied exclusively by the cartels paying the bounties.[6] At the beginning of 1904, when the steel syndicate commenced operations, the bounties were paid according to the following scale:[7] 1.50 marks per ton of coal, 2.50 marks per ton of iron (exclusive of coal bounty), 15 marks per ton of half products (inclusive of coal and iron bounty), 20 marks per ton of structural steel (inclusive of coal and iron bounty).

Except for a slight reduction of the bounty on half products for a short time, these bounties prevailed through 1904 and 1905.[8] At the end of 1905 the steel syndicate decided to grant export bounties only to such cartels as syndicated the foreign as well as the domestic sales, but at the same time they made a very important exception to this, as well as their previous rule; namely, they consented to give a bounty of 7 marks per ton for half products consumed by the producers of steel bars, although there was no cartel at all in this commodity. This bounty was to begin with the second quarter of 1906. The reason for this exception was that the establishment of a cartel

[1] Enquete, S. V., pp. 10, 18, 20.
[2] Cf. Ibid., pp. 15, 16.
[3] Cf. Iron and Coal Trades Review, Nov. 17, 1905, p. 1687.
[4] Raffalovich, p. 23.
[5] Vide Walker, p. 223.
[6] Wieser, p. 307; Vogelstein, S. d. V. f. S.-P., pp. 119, 120; Enquete, S. V., p. 431.
[7] Kartell-Rundschau, 1904, p. 373; Enquete, S. V., Anlage 3.
[8] Kartell-Rundschau, 1904, p. 871; 1905, pp. 145, 318.

in bars was deemed practically impossible.[1] If, as has been frequently claimed, there are some influential steel works in the syndicate who have obstructed the formation of a cartel for bars, this measure seems calculated to bring them around somewhat.

In the agreement constituting the steel syndicate one of the powers of the Beirat is "the granting of authority to the Vorstand to conclude protective and other agreements." Under this clause the syndicate has made agreements with foreign steel producers, which form a cardinal feature in its policy. Such agreements are by no means an innovation. An international rail pool which existed for a couple of years was dissolved in 1886.[2] In recent years there have been numerous international agreements in the steel trade, as, for example, rails, beams, rods, heavy sheets, wire nails, enamel wire, pig iron, etc.[3] These various cartels include a number of different countries, but particularly Germany's nearest neighbors, France, Belgium, and Austria. The policy of forming international agreements is the logical development of the policy of forming local or domestic agreements, and generally presupposes the latter. In the iron and steel industry combinations of a more or less comprehensive character exist in all the important producing countries, and there is no doubt that the formation of powerful combinations in one country stimulates its rivals to strengthen themselves in a similar manner. To a certain extent, indeed, the formation of the United States Steel Corporation has had an influence in bringing about the formation of the steel syndicate in Germany.[4] The establishment of the steel syndicate not only gave the German producers a greater power and prestige in foreign markets, but it also made it possible for them to make advantageous agreements with their rivals for the elimination of competition. The steel syndicate promptly availed itself of this opportunity.

A very circumstantial account of certain of these transactions was published in the Revue économique internationale for December, 1904, signed by "un industriel belge."[5] According to this authority a meeting was held at Aix la Chapelle in June, 1904, which resulted in the formation of an international beam pool between Germany, Belgium, and France, with quotas of 73.45 per cent, 15.05 per cent, and 11.05 per cent, respectively. This agreement was signed on November 24, 1904. It is to terminate on June 30, 1907.[6] Central selling offices were established at Dusseldorf, Brussels, and Paris. Negotiations were being conducted at the same time concerning the formation of an international rail pool, which appears to have been consummated on November 28, 1904, to take effect from October 11, 1904. The countries entering this pool and their quotas were as follows: England, 53½ per cent; Germany, 28.83 per cent; Belgium, 17.67 per cent; and France (which came in later), $\frac{4.8}{104.8}$ for the first year, $\frac{5.8}{105.8}$ for the second, and $\frac{6.4}{106.4}$ for the third. This agreement was to terminate on March 30, 1908.[7] The central bureau was located in London, besides local bureaus for each national group. Since then the chief American rail producers have joined this international

[1] Kartell-Rundschau, 1905, p. 692.
[2] Cf. Handelskammer zu Bochum, 1886, p. 13.
[3] Bosselmann, p. 61; Vogelstein, S. d. V. f. S.-P., p. 121; Kartell-Rundschau, 1903, p. 47, 1197; Deutsche Industrie-Zeitung, August 7, 1903; Wibaut, Trusts en Kartellen, Amsterdam, 1903.
[4] Cf. Gemeinfassliche Darstellung des Hüttenwesens, Düsseldorf, 1903, p. 120.
[5] Le Syndicat International au point de vue belge.
[6] Cf. Kollmann, p. 47.
[7] Cf. Ibid., p. 47; c. * * * "La métallurgie française," Revue écon. internat., Décembre, 1904.

pool. The Berliner Tageblatt reported this fact on December 1, 1904; the Deutsche Industrie-Zeitung alludes to the fact in its issue for January 20, 1905 (stating that the pool had already received numerous orders); and Kollmann states it also in his account of the steel syndicate, giving the American members of the pool as the Steel Corporation, the Lackawanna, and the Pennsylvania.[1]

Information regarding this agreement and the participation of American interests therein was not very generally known outside the trade apparently, so that on July 1, 1905, the New York Times came out with headlines announcing that the European and American producers had divided the world's markets, according to which Central and South America were to be left to the United States,[2] together with other details. Various statements have appeared concerning the terms of the agreement, but none apparently which bear the evidence of complete and authentic information.[3] An article in the Neue Hamburger Boersen Halle which seems to have had some special source of inspiration declares that the terms of the agreement, etc., had been kept secret at the express wish of the Americans;[4] and, in this connection, it may be noted that the directors of the steel syndicate refused to discuss or divulge their agreements with foreign producers on the ground that they did not feel authorized to reveal the business secrets of their associates.[5] Considering only the aspects of this situation from a German standpoint, it is evident that such agreements are of great significance to the steel trade, and a benefit not only to the German steel trade, but also to the whole national economy. For England, which has been the dumping ground of all nations, the situation is doubtless more complicated; but for Germany it can hardly be disputed that an arrangement that tended to raise export prices more nearly to a level with domestic prices would be of almost unalloyed advantage. For the straight rolling mills an international pool in half products would be particularly beneficial: but, although negotiations in this direction are reported, nothing seems to have been accomplished.

In passing judgment on the steel syndicate, it must be borne in mind that it is only a torso until the light-rolled products (B products) are included in its sales. It is probable that this will be accomplished before long, and it is probable also that the process of concentration will not end at that point. It is possible that something more comprehensive than the United States Steel Corporation, though not as large, may be the final result. According to the prevailing German view of industrial organization, combinations, like men, may be "good" or "bad," according as they conduct themselves. Up to the present the steel syndicate should be classed, on the whole, as a "good" combination; but it has yet to endure a serious ordeal, although the present hausse may show whether it possesses the most difficult and most valuable of cartell virtues—moderation.

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[1] Kollmann, p. 47.

[2] In the issue of July 2, 1905, it was stated that the American participants were the United States Steel Corporation and the Pennsylvania, Maryland, and Cambria Steel Companies.

[3] Cf. Kartell-Rundschau, 1905, pp. 390, 392, 440; Deutsche Industrie-Zeitung, December 9, 1904, p. 432.

[4] Cf. Kartell-Rundschau, 1905, pp. 390, 391.

[5] Enquete, S. V., p. 10.

LEGAL STATUS OF TRUSTS IN GERMANY.

By Consul General A. M. Thackara, Berlin, January, 1911.

The commercial tendency of the present time is toward concentration of capital and enterprise. I believe that in no country in the world has there been greater development of trade combinations, understandings of one form or another, than in Germany. Trade combinations which have been in existence for many years are extending their influence and new ones are constantly being formed. As stated by Consul General Mason in a report upon trade combinations in Germany, published in a special volume of consular reports:[1]

A cartel or trade syndicate is defined by Liefmann as a "combination for the purpose of maintaining the competitive power of its members, notwithstanding their varying individual facilities, against the advantages enjoyed by monopolists" by means of—

(1) Obtaining a uniform maximum selling price for products.

(2) By the creation and maintenance of a normal and rational demand for materials and labor.

(3) By creating a monopoly for every member or for every group of members in each branch of production.

THREE CLASSES OF SYNDICATES.

All trade syndicates are organized for one, two, or all three of these purposes, and as known in Germany they may be divided into three general groups or classes, as follows:

The "Selling Agreement," a cartel or convention under which the manufacturers or producers of a certain article or class of products agree not to sell their product below a specified minimum price agreed upon by all members of the cartel and changed from time to time in accordance with the varying cost of production and general requirements of the market. These rather loosely organized combinations were the original type of German trade syndicates and served their purpose very well in prosperous times, but in periods of depression and diminished demand it was found difficult to hold certain members to the agreement, and it was decided to adopt a more binding form of organization and put the business of selling under direct control of a central authority.

AGREEMENTS FOR SALE OF PRODUCTS.

This led to the creation of "Sale Syndicates" in which all members of a cartel pool their products to be sold through the ministrations of a central committee, which besides fixing the selling price

[1] Special Consular Reports: Trusts and Trade Combinations in Europe, Vol. XXI, Part III. The supply of this volume is exhausted, but a file copy may be consulted at the Bureau of Manufactures.

apportions among the members orders as they are received, in proportion to the capacity of each, the quality of the merchandise ordered, and the conditions of transport.

Examples of this class, which is by far the most numerous and important in Germany, are the Rhenish-Westphalian Coal Syndicate, which controls the production and sale of coal in western Germany, and the recently organized Westphalian Pig Iron Syndicate. In a syndicate of this class, the individual firms and companies which it includes retain their corporate autonomy, pay dividends on their own stock according to earnings, and unless otherwise agreed in the cartel, purchase independently the raw materials of manufacture.

The third class includes the real trusts or closely organized syndicates, which absorb and take up the shares of the original corporations, issue new stock, and consolidate the whole management under the absolute control of a central authority.

All these various forms of syndicates are organized under the very comprehensive and far-reaching German general laws.

CHARTERS AND REGISTRATION.

There is no particular requirement that a cartel or syndicate shall obtain a charter from the Imperial or State Government or file in any Government office a copy of the contract or protocol which forms the basis of such associations other than the copy required under the provisions of the general law applying to the form of company chosen. If, in the case of a "Selling Syndicate," a special central office is opened for selling the products of its several members, this office must be registered like any other business house in the commercial register (Handelsregister) of the proper local court, and is subject to the general law governing corporations, but no other or unusual formality is imposed.

Concerning the methods used in the formation of the various trade combinations in Germany, their legal status, and the attitude of the Imperial and State Governments toward these combinations, the following data have been prepared by an American lawyer practicing in this city:

I. LEGAL FORM.

When two or more persons or firms combine to do or refrain from doing certain things, the simplest way of giving legal expression thereto is by entering into a mutual agreement or contract, specifying the positive or negative obligations of the parties. Such syndicates or cartels are usually known as "conventionen." Negative obligations are recognized by section 241 of the German Civil Code, so that agreements to refrain from lowering prices or from selling or producing more than a given quantity, are not necessarily illegal, certainly not on their face.

Such contracts are usually balanced in the consideration and counter consideration specified and therefore come under the definition of mutual contracts as defined by section 320 of the German Civil Code. There has been a difference of opinion among German jurists as to whether the legal relation thereby created was to be re-

garded as merely contractual or as approximating to that of a partnership. The adherents of the latter view maintained that the mere presence of mutual contracts was not enough, but that the end to which such contracts were concluded must be considered and that this end was the attaining of some common object, which brought them under the provisions of section 705 of the German Civil Code. This question, however, is mainly one of theoretical interest and may be dismissed. For practical purposes, however, it is generally accepted that a cartel or syndicate bears such a similarity to a company in the sense of the German Civil Code that many of the provisions of the latter are regarded as applicable by analogy and there is a decision of the German Supreme Court from the year 1902 giving expression to the above view.

It is permissible for various kinds of companies and firms to conclude mutual contracts; that is to say, "natural persons," "partnerships," "societies in commendam," "limited companies," and "stock companies" can conclude mutual contracts among themselves, and thus constitute a cartel or syndicate by mutual contract or "convention." No special form of contract is necessary; indeed, theoretically such a contract could even be made orally.

Complete mutuality or privity of contract is, however, necessary. Each individual contracting party must enter into the contractual relation with each other of the contracting parties individually.

CIVIL PARTNERSHIP.

The "Gesellschaft des Bürgerlichen Rechts," which may be translated as "civil partnership," to distinguish it from the partnership of the commercial code, and which is defined by section 705 of the German Civil Code, is in most cases a better and more appropriate form than the mutual contract. No specific form is prescribed; the "company contract" or articles of association can be formulated with elasticity to suit the particular case, and rules may be formulated for the general management of the organization. The common purpose must, however, be one permitted by law and must not be against good morals. The foregoing form can be chosen in all those cases where the syndicate or cartel itself does not have to be charged with the immediate conduct of the business.

In the German system of law the threefold division of civil, criminal, and commercial law prevails, and consequently, if the syndicate or cartel is of such a nature that the business must be conducted directly by it, it will probably come under the compulsory provisions of the commercial code touching the registry of business undertakings, instead of under the civil law, so that the form of the commercial partnership or "Offene Handelsgesellschaft" must be adopted.

COMMERCIAL PARTNERSHIP.

The commercial partnership or "Offene Handelsgesellschaft" is a company formed for the purpose of conducting a mercantile business. It is governed and defined by section 10 of the German Commercial Code. Notwithstanding this arbitrary distinction between the civil partnership and the commercial partnership, they are very much alike, and, unless otherwise prescribed by the commercial code, the provisions of the civil code find analogous application.

SOCIETY IN COMMENDAM.

The "Société in Commendam" is a company form of which we in the United States still have examples in Louisiana, inherited from France. This form is known in Germany as the "Kommanditgesellschaft," and it may be compared to our partnership in which the partners are divided into active partners and sleeping or silent partners.

In practice it has been found that this form of company is not well adapted to the purposes of a cartel or syndicate, one of the prime necessities of which is to restrict and control each individual member thereof, and where the individual member itself is a company consisting of two or more natural persons such control must be extended to these also, and this is not always easy in the case of the silent or sleeping partner. The "Kommanditgesellschaft" is described in section 161 of the German Commercial Code.

SILENT COMPANY.

The German "Stille Gesellschaft," which may be literally translated as "silent company," is a company form closely analogous to the "Kommanditgesellschaft," the main difference being that in this case the silent partner acquires an interest in a business or undertaking conducted by a merchant or tradesman by the contribution of capital.

A merchant or tradesman comes under the provisions of the commercial code; he who gives the capital, however, is not subject to this restriction and does not actively participate in the conduct of the business, which is conducted by the merchant or tradesman alone and in his own name. This also is analogous to our partnership sole. This company form has hitherto been used very little for syndicate or cartel purposes for the simple reason that it is inapplicable and inappropriate.

THE VEREIN OR SOCIETY.

These are divided into two classes, those which are designated as "rechtsfähig" and those which are "nicht rechtsfähig." Roughly speaking, the German law permits various societies, clubs, and the like to exist without necessarily recognizing them as being capable of asserting or claiming rights and owing duties in the manner which characterizes other company forms. If such a society or club apply to the State for a charter and such charter be granted, it becomes a "rechtsfähiger verein," because it is the holder of a franchise.

Neither of these forms lends itself well to the purposes of a syndicate or cartel, but they are mentioned here for the reason that a great many provisions of the German law which apply to these "vereins," or societies, find analogous application to other company forms, such as "corporations," "limited companies," and "stock companies," and "societies in commendam," all of which are employed for syndicate purposes.

THE STOCK COMPANY OR AKTIENGESELLSCHAFT.

This company form is the German equivalent of the American private corporation. It is defined and governed by the provisions of the German Commercial Code, supplemented by the provisions of the civil and criminal codes. Use has been made of this company

form especially in those cases where various undertakings have found it necessary to establish and conduct a central sales office. The main distinction between this form and the preceding ones is to be found in the fact that it is a juristic person, whereas the foregoing were not, and that the principles of limited liability apply to it.

The founding of a syndicate undertaking in the form of an "Aktiengesellschaft" in this country is in the main so similar to the like procedure in America that further consideration of this point seems superfluous. Reference may, however, be made to the difference here between "Vorstand" and "Aufsichtsrat," the former being the actual board of management and the latter representing the board of supervision. The "Vorstand" may perhaps be compared with the officers of an American corporation charged with the active business management, whereas the "Aufsichtsrat" is similar to the more passive members of the board of directors.

"GESELLSCHAFT MIT BESCHRÄNKTER HAFTUNG," OR LIMITED LIABILITY COMPANY.

This form of company is perhaps the most popular of all. It is not to be confused with the English limited company, since the latter is the full equivalent of the American private corporation, whereas the German limited company may be termed a hybrid, partaking as it does of several of the essential features of a stock corporation and of a partnership. The following may be mentioned:

(1) It is a juristic person.

(2) It is represented by one or more business managers.

(3) The shareholders are limited in their liability.

(4) The shares are transferable, but only by a notarial or judicial act.

(5) Stock certificates are not issued.

(6) Contributions to the capital stock may be made either in money or in money's worth.

(7) The construction of such a company can be varied to suit almost any conceivable case and may be as simple as a partnership agreement or as complex as the charter and by-laws of a stock corporation, and it can either have a board of directors or other organs of supervision or not, as desired. This company form was created by a special imperial statute: "Gesetz betreffend die Gesellschaften mit beschränkter Haftung vom 20. April, 1892, in der Fassung der Bekanntmachung vom 20. Mai, 1898."

This form is well adapted to cartel or syndicate purposes. There are no restrictions as to residence or nationality of the members of such a company, and they may be either natural persons or juristic persons. It is perfectly possible, therefore, for any number of undertakings existing in various forms each to delegate a representative to cooperate in forming such a limited company. A company so formed can act as a central office for receiving and allotting orders to its members, receiving payment, regulating prices, and dividing dividends. Balance sheets do not have to be published, and the resolutions of members may be made either in general or in special meetings, or if unanimous they can be made without any meeting at all by simply being put in writing and signed by all the members.

OTHER FORMS.

There are still other company forms, but it is not worth while to mention them in this connection, since they are but poorly adapted to the purposes of a cartel or syndicate, and for this reason are very seldom employed.

II. POSITION OF THE CARTEL OR SYNDICATE IN JURISPRUDENCE.

The text writers agree that cartels and syndicates have a recognized place in the jurisprudence of this country, and that they do not per se offend against the principles of freedom of industry and commerce.

The German Civil Code, paragraph 138, says that a transaction which offends against good morals is void. The forming of a cartel or syndicate is not held to come under this paragraph, but when formed it may bring itself under the operation of this provision by the means which it may choose to attain its purposes, such as for instance boycotting, the cutting of prices with competitors to such an extent as to bring about the financial ruin of the latter, misuse of their monopoly franchises, and the like. Concerning boycotting, there are decisions of the imperial supreme court in the years 1903 and 1906 on this point.

The German civil code contains certain paragraphs touching "treu und glauben," or truth and good faith, and perhaps these paragraphs may be designated as containing equitable principles in contradistinction to the more fixed legal rules, there being in Germany no system of equity law and no equity courts. The supreme court at Leipzig decided in the year 1904 that a stricter moral standard must be applied to cartels and syndicates; that is, that they must be held to a stricter accounting for the moral quality of their acts, because of the preponderance of economic interests which they represent.

SYNDICATE SECRETS.

According to paragraph 384 of the German Code of Civil Procedure, a witness can refuse to answer questions in cases where to answer the same would be to reveal an art or industrial secret. The question has arisen as to whether a cartel or syndicate falls so far under this paragraph as to justify a witness in refusing to give testimony on the ground that his so doing would be revealing an art or industrial secret. The question is not yet settled, opinion being very much divided, but as a matter of fact the courts have in several instances upheld the objection of witnesses to testify on that ground. I have been unable to ascertain that the cases in question were of any great significance or that the paramount interest of the State constituted a factor thereof.

III. LAW OF UNFAIR COMPETITION.

There exists in Germany a statute touching unfair competition which is known as "das Gesetz gegen den unlauteren Wettbewerb." Paragraph 1 of the above law consists of a general clause to the effect that whoever is guilty of transactions in industrial dealings which offend against good morals may be held liable in damages. The

German word is "handlung," which is usually translated by transaction or act or the doing of something, since it usually has a positive sense, but the text writers, and also the courts, agree that to refrain from doing a thing is also a "handlung," or act which, although of a negative character, still falls under the operations of the law in question.

It may, therefore, easily happen in the case of a conflict between a syndicate and an outsider, that certain acts, or "handlungen," may take place offending against this law, and in such cases the law affords a fair remedy against the offender. This is really the only special German statute which approximates to our law and statutes touching the restraint of trade and unfair competition.

The provisions of the statutes touching unfair competition are supplemented by the provisions of the civil code relating to the awarding of damages. It seems to be the opinion of the text writers that the existing legal provisions and principles give to outsiders and to the public in general sufficient protection against an undue use or misuse of syndicate power. Some text writers even go so far as to maintain that the cartel or syndicate is actually unduly handicapped before the courts, simply because it is supposed to be big and powerful.

SPECIAL LEGISLATION.

Some years ago special legislation touching syndicates was contemplated, but the general consensus of public opinion did not seem to indicate that the necessity for such a measure was then sufficiently great, and it has never become law. At present there is no indication of further legislation, nor does the public at large, the Imperial or State Government feel the necessity for taking any other action than such as can be taken under the existing rules and principles of law to prevent the misuse of trusts and combines.

There probably have been cases in which cartels and syndicates have been declared illegal by the courts, but I think it will be found on examination that these cases are entirely parallel with other cases where the illegality was due to some noncompliance or faulty interpretation of the technical rules of law governing such cases—that is to say, was not due to the fact that a trust or combine existed, but to the fact that it had not been properly organized—and consequently such decisions are of no more importance than similar decisions touching an ordinary stock company or limited company or partnership where the provisions of the law had not been complied with.

As a matter of fact, the law is not directed against these combines per se, but against any misuse of their powers and franchises where such can be proved, and the principles and rules touching good faith and the moral quality of business transactions can be so strictly applied as to give to the public sufficient guaranties to insure its own protection.

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COMMENTS BY THE CONSUL GENERAL.

As stated before, trade combinations in Germany are not organized under special laws, but are formed and operated subject to the provisions of the general laws, a list of which is given above. Interested persons can probably have access to them at the office of the German Society of the City of New York, 147 Fourth Avenue, or at the Imperial German consulate general in that city, Congressional Library at Washington, etc.

It may be observed that the Prussian State is a member of the Potash Syndicate and is a large miner of potash. The Prussian draft of the new potash law contained the provision that all the German potash mines should be compelled to join the syndicate, but this compulsory measure was not embodied in the imperial act as finally passed. The Prussian State also owns nearly half of the stock of the Hibernia coal mine, and at the time the purchase was made it was the declared purpose of the Prussian Government to obtain a controlling interest in the mine, in order to have a seat in the administration of the Westphalian Coal Syndicate, but in this the State was not successful.

LEGAL OPERATION OF TRUSTS IN GERMANY.

From Consul General Robert P. Skinner, Hamburg.

Supplementary information is desired to that on the "Legal Status of Trusts in Germany" by Consul General Thackara and published in Daily Consular and Trade Reports for January 25, 1911. The following inquiry has been received:

> I have heard from many sources that the laws of the German Empire covering the matter of business arrangements between those in the same line of business are most favorable to the interests of the manufacturing and mercantile houses, and I take the liberty of addressing you to inquire if you can furnish me with a copy of the laws which would cover combines or which would cover the same general ground as the Sherman antitrust law in the United States.

Replying to the above, it may be stated that there is no German law of the character described. There is no German law which either expressly authorizes or forbids the creation of the so-called trusts so numerous in this country. The law merely guarantees to the individual the right to engage in trade, but does not withhold from him the right to combine with any or all of his competitors. The theory seems to be that in granting to trade and commerce the very extensive privileges referred to by my correspondent, the general interests of the public at large are protected by the resulting prosperity of such interests, even though the immediate effect may be to enhance the cost of the commodity controlled.

DIFFERENCE BETWEEN GERMAN AND AMERICAN LAWS AND IDEAS.

In a recent discussion of the subject Mr. Albert Ballin, the general director of the Hamburg-American Line, said:

> In Germany syndicates are protected by several laws, and therefore it may arise very easily that the American Government would require the dissolution of a syndicate while the dissolution, according to German law, itself would become punishable.

The majority of German business men and economists are not opposed to such syndicates and the creation of monopolies, in which the State itself sometimes participates in combination with private producers, is lawful if the creators commit no injurious act, a limitation so difficult to define and comprehend that practically the only difficulties with which the ordinary cartels come into contact are difficulties arising between the members themselves. The courts have frequently recognized the perfect right of producers to control their product in a monopolistic organization as a right somewhat akin to the right to make use of a highway, and only subject to correction of abuses of power.

The profound difference between the German and the American conception of sound business conditions is best explained, perhaps, by the racial difference between the two peoples—the German with strong collectivist tendencies which manifest themselves in society,

in government, and in trade, and the American with a deeply rooted individualism which remains even when he engages in a collectivist enterprise. Thus it happens that the capitalistic classes of Germany, although opposing socialism in their public life, nevertheless drift in the direction indicated by their natural tendencies in their business life, and in so doing they have the tacit approval of the avowed socialistic classes, who perceive in the steady accumulation of the producing powers in a few hands a movement tending logically and inevitably toward the eventual realization of their dogma—that is, the State in supreme control.

GOVERNMENT CONTROL.

An extreme example of the German tendency may be found in the potash syndicate of which so much has been heard. In this case the Prussian State itself was one of the producers, and when a certain situation was reached, the State interposed and required by law that the entire production of the country should be sold through a single selling agency, organized by law, which also established the terms of sale and the limitation of production. In this case it was argued that the monopolization of the industry was necessary to conserve the important mineral resources of the country. The commentators upon the claim of industrial organizers that some generally desirable end is to be attained point out, as has Gustav le Bon, that—

> Socialism is much less dangerous in reality in its absolute form than when it takes on the aspects of simple projects of amelioration by regulating labor. Under its absolute form one sees the dangers and may control them. Under its altruistic form one does not see them and it is accepted easily.

The German courts have repeatedly ruled, according to Richard Calwer, the socialistic writer, in his Cartelle und Trusts, that the syndicates do not violate the principles of trade liberty as they tend to protect the interests of the whole nation against the selfishness of individuals, and to protect the products of industry from the many disadvantages which arise from price cutting.

Under these rulings absolute or partial monopolization by many cartels has been brought about, the national output being reduced, with a consequent lifting of prices to a remunerative level. The danger point would be reached, from the point of view of the law, should a cartel of this character, on the possible refusal of one outside producer to accept its terms, undertake by unfair means to drive him into its fold or crush him if he refused its terms, and the difficulty of the prosecution would be to prove that any such result had been contemplated, even though its effect had been attained.

GERMAN CARTEL UNLIKE AMERICAN TRUSTS.

The very forms of commercial organization most common in Germany and America correspond to the temperamental qualities of the two peoples. In Germany the commercial trust, or cartel, is usually a federation in which each member retains its commercial identity while abandoning its freedom of action to the federation for a contractual period of 3 or 5 or 10 years or perhaps longer, but expecting eventually to get it back, and then perhaps make another contract if the results of the first have been satisfactory. A German cartel is, as a rule, open to all those who submit to its provisions, and the control of the members is confined to the limits traced in the

federal pact. In the typical American trust, instead of this association of units with influence usually rated according to productive capacity, we observe generally the permanent ownership of a large part of the enterprise by a small group of persons in which there is ordinarily some dominating personal element.

The basic notion of the German organizer has been to control production definitely, leaving it to the resourcefulness of the individual producers in the cartel to make more or less profit out of the proportion of the production allotted to them; the basic notion of the American organizer has been, usually, to create a perfected and consolidated instrument, success following naturally as a result of its well-balanced and skillfully organized proportions. German cartel organization has contemplated that all its constituent firms should remain in business; American commercial centralization usually has meant that the weaker or for any reason undesirable elements should go out of business, suggesting that the strong native individualism of our people rises to the surface even when an effort tending toward pure collectivism is attempted.

OPINIONS OF THE GERMAN COURTS.

Having thus discussed the subject in its broader aspects, it will be interesting to read a few extracts from the decisions of the imperial supreme court, from which can be gathered the rights and duties of business combinations in Germany, rather than in the statutory law, which is silent on the question.

The court, after acknowledging that foreign countries (mentioning authorities in France, Russia, and the United States) follow contrary principles, bases its opinion that it is to the benefit of the public that prices should be kept in a normal state on the following argument (Civil S., Bd. 38, 155):

> If in any branch of business the prices so decline that a profitable trade is made impossible thereby, or that the trade is seriously endangered, the crisis at the start is not only injurious to the individual person but also from a national economic point of view, and it lies, therefore, in the interest of the whole that the inadequately low prices in a certain branch of business should not permanently exist. Therefore, formerly and at the present time, legislators have aimed to increase prices of certain products by inaugurating protective tariffs.
>
> It can not therefore be looked upon as generally contrary to the interests of the whole if manufacturers of a certain article form a cartel in order to prevent or to modify the mutual underbidding and the decline of prices for their products caused thereby; on the contrary, if the prices are continually so low that the manufacturers are threatened with financial ruin, their forming a cartel is not only to be looked upon as a justified manifestation of self-preservation, but also as an act which lies in the interest of the whole.
>
> The formation of the syndicates and cartels in question, therefore, has been designated in various quarters as a means which, if reasonably applied to national economies, is especially adapted to prevent uneconomic overproduction, yielding no profit and resulting in catastrophes. (Vergl.: Kleinwächter, Die Kartelle, S. 160 ff.; Brentano, Ueber die Ursachen der heutigen sozialen Not, insbesondere S. 23 ff.; Steinmann-Bucher in Schmoller's Jahrbuch für Gesetzgebung, Bd. 15, S. 451 ff.; Manck, Eine Weltmonopol in Petroleum, S. 7 ff.; Seemann, Die Monopolisierung des Petroleumhandels, S. 3 ff.)

The imperial supreme court (Civil S., Bd. 56, 277) points out the bounds of a cartel. It says:

> A commercial association, or a person carrying on a trade, can not be prevented from making special conditions to third persons concerning business

contracts or the maintenance of a certain business relation, nor from refusing delivery if such condition be not fulfilled. Even if this is a certain limitation of the liberty of the parties concerned in order to force them to act according to the commercial regulations of the association, it must be stated that not every restriction of the free will of another person is necessarily the result of an unlawful or immoral act.

However, it would be immoral and unlawful, according to article 826, Bürgerliches Gesetzbuch, should the defendant have taken steps through which the very existence of the other party was threatened, his commercial enterprises crippled or undermined, and his business credit and reputation damaged.

A DECISION ON TRANSPORTATION.

In a judgment of April 11, 1901, A. B. *v.* D. A. Dampfschifffahrts-gesellschaft (R. G. Civil S., Bd. 48, 114), the defendant had demanded that the plaintiff give up his shipping facilities to a certain point, with the idea that the defendant should monopolize the shipping business to that point. The plaintiff disregarded this demand, whereupon the defendant refused to take the freight of the plaintiff either to the place in question or to any other place at the same freight rates paid by the public in general. The plaintiff sought to enjoin the defendant from refusing to accept the plaintiff's freight at the regular rates.

The imperial court says (p. 124 ff.):

Especially article 826, which has the object mentioned above of effectively preventing disloyal injury in business intercourse, comes into consideration, wherein the nature of the injured property right is immaterial. Also the encroachment upon the rights of other persons, influencing only their business prospects or their connections with their customers, may be looked upon as such an injury. Even the exercise of a formal legal right is influenced by article 826, when a third person suffers damages through measures taken by a party with intent to do harm in an immoral way.

As to the standard of "good morals" (Cf. art. 138 of the Civil Code) the judge must consider the predominant feelings of the people, the morals and good sense of all those who judge fairly and reasonably.

Thereby it does not follow that consideration may not be given to the moral viewpoint of a particular social class when distinctly stamped as its prevailing custom. Such is the case in the present instance, in which the views of every honorable merchant in his commercial intercourse must be considered.

This is not to be confounded with usages or practices which have actually been adopted in commercial intercourse, which possibly may constitute not a good custom but rather an abuse. If the court of appeals decides the measures in question to be similar to those employed in daily open competition the applicability of article 826 of the Bürgerliches Gesetzbuch is by no means ruled out quite apart from the actual correctness of the representation of the facts.

In the struggle for commercial supremacy a great many machinations and actions occur which are by no means looked upon as decent and reputable. Especially must article 826 of the Bürgerliches Gesetzbuch protect persons in the future against the abuse of liberty of trade by parties greedy for gain and against oppression and spoliation.

PRIVILEGE OF MAKING PURCHASES.

A, a member of a combination, wrote B that unless B in the future discontinued making any purchases from firms outside of the combination the combination would refuse to sell him any goods. B then agreed to buy exclusively from the combination. A was thereupon, at the instance of a firm outside of the combination, arrested and convicted of a crime under article 253 of the Criminal Code, which reads as follows:

Any person or persons forcing another person to execute, to tolerate, or to omit an action, either through violence or threats, in order to secure an illegal

pecuniary advantage (Vermögens-Vorteil) for themselves or for third persons, are guilty of extortion and are to be punished with imprisonment not under one month.

The attempt is punishable.

The defendant pleaded his good faith, relying on the by-laws of the combination. The imperial court (Straf—S. Bd. 34, 15–21 ff.) says:

The aforementioned association is a so-called cartel. Opinions differ exceedingly on the subject of whether such cartels should be approved of under all conditions from a national economic point of view or should be restricted. A law forbidding the formation of cartels does not exist. The defendants, therefore, were under no restriction whatsoever as to making agreements in the name of the firm with the managers of factories or owners of other firms regarding a refusal of delivery of goods to certain persons, even if in doing so he endeavors to attain a pecuniary advantage (Vermögens-Vorteil).

The price of a merchandise is, apart from other conditions, established by free competition. This free competition is warranted by law, which prescribes, in article 1, Gewerbe-Ordnung, that, as a matter of principle, all trade concerns (which includes all commercial concerns) shall be free; and in article 7 that "no rights to restrict other persons in carrying on a trade shall exist." This principle does not stand in their way if persons restrict the possibility of competition through special agreements by obliging partners to perform certain actions or omissions.

If, however, the regulations of cartels or their execution go beyond the determination of rules for certain circumstances, and beyond the stipulations concerning the carrying on of trade by their members who bound themselves to these regulations according to the agreements, and if these stipulations encroach upon the rights exercised by third persons, they are to be looked upon as unjustifiable and not in accordance with the law.

It must be looked into and determined whether the firms, having formed a cartel, endeavored to procure a portion of their business profit through forcing the prices higher by tying up competition which stands under the legally warranted freedom of trade. If this is the case, the portion of their profit thus earned is doubtlessly not in accordance with the law, and it is an illegal pecuniary gain from other persons. (Vergl: Entsch. d. Reichsgerichts vom 23. Oktober, 1896, in Goltdammer, Archiv, Bd. 44, S. 274.)

And if this tying up of competition is reached through threatened exclusion of delivery of goods, thereby forcing other merchants to discontinue all business relations with firms standing outside of the cartel and to avoid all connections with such firms, although they would be able to purchase cheaper from these firms, not only the buyers suffer considerable damages through this illegal compulsion, but also the sellers at lower prices, who are deprived of continuing business through this compulsion if they do not subserve themselves and become members of the cartel. In these two cases the firms, being members of the cartels, enrich themselves through illegal methods.

THE EXTENT OF TRUST CONTROL IN GERMANY.

The first article of the Gewerbe Ordnung of Germany reads as follows:

The carrying on of trade is permitted to everybody unless exceptions or restrictions are prescribed or permitted by this law. Whoever is now entitled to follow a trade can not, because he does not satisfy the requirements of this statute, be excluded therefrom.

The decisions of the courts have generally succeeded in demonstrating that the principles of commercial liberty are not violated by the organization of trade cartels. The various kinds of unions commonly denominated cartels, recognized in this country, are foreign and international associations, communities of interest, associations for the purpose of protecting general economic interests, agricultural cooperative associations, unions of tradesmen, and coalitions of workingmen.

The judicial forms of these organizations are numerous, the majority being constituted as limited-liability corporations and many as joint-stock companies. Others are confederations of the loosest kind. For example, there are 350 manufacturers of felt shoes and slippers, 550 manufacturers of leather shoes and boots, the most important telephone manufacturers, who simply declared publicly that they were obliged to advance the prices of their products in consequence of the increased cost of raw materials and the increase in cost of production.

Many cartels are of a local character, or limited to a particular region. Such are usually unions of manufacturers whose markets are limited to the region affected.

There are many such cartels composed of manufacturers of cement, briquets, and bricks, and of the dairy farmers. Among many of these cartels efforts have been made to accomplish the syndication of the cartels themeselves. There are a great many Konditionskartelle in which the members agree to adhere to certain terms of delivery and sale, the terms of which are laid down in a uniform contract with which each member binds himself to comply. The contracts frequently refer to guaranteeing of credits, the manner in which payments are to be made, the rates of discount, and whether or not sample orders should be charged for or supplied free.

STATISTICS OF COMBINATIONS.

The highest degree of syndication in Germany has been reached in the mining and iron industries. Although the number of cartels existing in these industries is not large, they are mainly well organized and very strong; for example, the Rhenish-Westphalian coal syndicate in Essen, and the Stahlwerks-Verband, or steel syndicate, in Dusseldorf.

The Imperial German Government issued statistics in 1905 showing that there were 385 cartels existing at that time in Germany, but these figures are said not to contain the Konditionskartelle (those, e. g., fixing terms of sale other than prices) and numerous other confederations, the existence of which was not then within the knowledge of the authorities. When these statistics were made up it was understood that about 12,000 establishments were members of syndicates. The following recapitulation shows the variety of industries covered by commercial combinations in 1905:

Coal mining	19	Textiles	31
Stones and earths	27	Paper industry	6
Brick industry	132	Leather trade	6
Earthenware industry	4	Wood industry	15
Glass industry	10	Food products	7
Iron industry	62	Miscellaneous	7
Metal trade	11		
Machinery, electricity	2	Total	385
Chemical industries	46		

Special commissions of the Reichstag studied the subject between 1903 and 1906, and as a result of the investigation it was not deemed necessary, at that time, to formulate legislation of a restrictive character. It is probably recognized that restraint of trade is not without its grave inconveniences and perhaps dangers, but that in the present state of public opinion in this country it would be unwise to destroy a system so deeply rooted in the habits of all classes of society.

THE CAUSES OF TRUSTS AND SOME REMEDIES FOR THEM.[1]

By Francis Walker.

While trusts, or to use a more satisfactory terminology, industrial combinations and monopolies, are comparatively recent phenomena in our economic life, their vital importance to society and the individual has resulted in attracting to them an unusual degree of attention. The subject itself is a complex one, and the more intensively it is studied the more difficult it seems to bring all the phenomena into a brief formula, or to prescribe a general policy by laying down a simple rule. It would be impossible to explain in a short paper all of the real causes of trusts, many of which have never been thoroughly studied, and it would be unprofitable to discuss all of the proposed remedies. This paper aims simply at suggesting for discussion certain of the chief causes and certain remedies which appear to be of special interest to the economist at the present time. As far as possible the legal aspect of the question will be omitted from consideration, while the economic phases will necessarily be treated in the broadest manner, and, therefore, without exclusive reference to our peculiar legal conditions.

Industrial combinations may be described as associations of originally independent makers of, or dealers in, a given class of commodities, established with a view to regulating the production or sale of them in a manner more profitable to themselves than that which would be determined by free competition. Industrial monopolies may be described as particular concerns or combinations of concerns which have acquired a more or less complete possession of the markets in their respective fields of production or trade. The "trust" falls in both of these classes, but does not include all the types of either of them.

The causes of combinations and monopolies are various and may be classed according to several different principles. In the case of a given combination or monopoly it would probably be found on investigation that it owed its formation to several causes. While the arbitrary determination of the trust promoters or founders is often regarded as the cause, there are generally certain conditions existing which virtually control their determinations.

The following headings should be regarded rather as an arrangement of topics for convenience than a scientific classification. Monopolies may be classed according to their chief causes as follows:

1. Those depending on legal grants, such as patents and franchises.
2. Those depending on the sole possession of natural resources.
3. Those depending on rebates or similar special advantages.

[1] Reprinted from the Papers and Proceedings of the Twenty-Second Annual Meeting of the American Economic Association.

4. Those depending on unfair competition, such as local price cutting or preventing competitors from getting supplies and facilities.

5. Those depending on efficiency superior to all competition.

6. Those depending on agreements among competitors.

It is evident that as monopolies may result from combinations, a whole train of other causes of monopolies appear, namely, those that lead to combinations. Before coming to the causes of combinations, however, it may be noted that a number of circumstances which afford a basis for monopoly are likewise inducements to combinations. In order to avoid repetition and confusing in a greater degree a subject necessarily complicated, the effects of these conditions favoring combination need not be considered any further. Classifying combinations according to their causes, we may distinguish the following chief kinds:

1. Those induced by bad systems of corporation law, which allow undue liberty in the consolidation of corporations, and under which there is opportunity given to promoters to make improper gains by the issue of watered stocks and by other financial devices.

2. Those designed to take advantage of a protective customs duty.

3. Those designed to counterbalance labor unions and to give to the employers greater power in bargaining with labor.

4. Those designed to counterbalance a combination in another branch of industry.

5. Those induced by the destructive effects of excessive competition.

6. Those induced by the opportunity to get control of the market and to enhance prices.

It will be observed that monopolies and combinations, though two distinct things, are not mutually exclusive. Some monopolies are consolidations or combinations of a less permanent or less integrated form. On the other hand, almost any combination may become a monopoly under certain conditions. Most of the so-called trusts which have a monopolistic power have passed through the stages of loose combination to a more or less consolidated form or organization.

The combinations which are formed in consequence of the effects of excessive competition may be often practically necessary, if the producers, as a class, are to avoid losing money, and in this sense the elimination of competition may be described as natural. The term "natural monopoly" is familiar and refers generally to such enterprises as steam railroads, or more especially to municipal enterprises, such as street railways, gas works, and waterworks. But these are only a few of the enterprises which become noncompetitive from a natural cause in the sense the term "natural" is used above. When the matter is thoroughly analyzed, it results in the conclusion that under certain conditions, competition, when effective and unremitting, becomes destructive of even the stronger competitors, and thus tends either to eliminate all competitors except the one final victor or to reduce a comparatively small number of survivors to bankruptcy. It may be fairly said that under such circumstances the conditions of natural monopoly exist.

In the popular mind the principal cause of combinations and trusts, probably, is the mere chance presented to secure control of the market of a particular commodity, either for a brief period or in a more permanent way; that is, no particular factor or circumstance

was decisive unless, perhaps, the personal element in the promotors of the combination. It is particularly with this type in mind that our antitrust laws have been enacted. In this group, which may be called the omnibus group, all the combinations not due to specific causes already mentioned may be included. Combinations organized simply with a view to control prices and without any other hold on the trade have generally been characterized by an extravagant price policy. The reason for this is that a mere agreement among producers is not likely to last long, and a consolidation of them in any case would be likely to develop new competition, so that under such circumstances the natural impulse is to make hay while the sun shines.

Let us return now to the question of natural monopolies. It has frequently been observed that one of the most fertile fields for the growth of combinations and monopolies is where there exists a limited supply of some highly useful gift of nature, such as coal, ore, petroleum, timber, water power, etc.

While it can not be proved statistically, there is good ground for believing that in several branches of mining the products, under a competitive system of production and sale, often do not on the whole repay the producers for their outlay. The people who generally make money from such products are those on whose lands the deposits are found and who lease them on royalty. Production is encouraged in some branches of mining by the speculative profits and maintained in others, even though the business as a whole is a losing one, by the fact that capital is heavily and irretrievably committed. The conclusion as to the unprofitableness of mining seems to be justified particularly by a study of the history of coal mining and iron-ore mining where the industry is conducted under conditions of free competition. As such conditions, in a certain sense, afford a justification for combinations, it is important to examine them in some detail. Combination in self-defense can hardly be regarded as an assault on the public welfare requiring penal correction.

A good illustration is found in coal mining. At the beginning of the exploitation of a coal field, it naturally happened that the producers attacked, at first, comparatively accessible deposits, and consequently were obliged to apply but little capital, or otherwise commit themselves seriously to the continuation of the business. Under such circumstances they prospered or failed, continued or abandoned their activities, according to the profits obtained. As the business developed, however, the coal lands acquired more value, due to the development of the market (or demand), and those who engaged in coal mining, or those who had coal lands, found themselves in the position of holding something of value, which, however, could yield a return only if brought under exploitation. On the other hand, the development of the industry led to the sinking of more capital into mining improvements, such as shafts instead of slopes, more elaborate mechanical equipment, etc., either because the coal had to be sought at deeper levels, or because such an equipment, when properly utilized, resulted in a reduction in the cost per ton of coal mined. In fact, it was found that operating costs depended in a large degree on output, or how much coal could be taken from a single shaft. This condition drove every operator to try to increase his output in order to lower his costs.

The inevitable result was overproduction. The market became glutted with coal, which so declined in price that it afforded a profit to only a few of the best located producers. Many of those who were losing money stuck to it because their capital was committed; others failed outright and quitted the business. It was quite possible, however, for production to be continued in mines in which the cost of production exceeded the market price, particularly if the operating company became bankrupt and sold its improvements far below cost. The natural growth of demand was the beacon of hope to the mining operator, but when the demand did outstrip production, either from the natural growth of population and use, or from unusual industrial activity, this opportunity was seized on by those who possessed coal lands hitherto unexploited, or previously exploited but abandoned, to enter the business, so that production and competition in a short time became excessive again, and with that, a new period of glutted markets and unprofitable business occurred. In such periods of bad times, there was no chance to accommodate production to demand through a general reduction in output, because as long as the coal operator was working on a strictly competitive basis, he could not reduce his output without increasing his cost per ton. The extra amount of coal produced by him had much less effect in depressing the market price than in diminishing his own costs. As long as he could not rely on others reducing their output, the most advantageous thing for him to do was to increase his own output. Under such circumstances, competition became destructive, cutthroat competition, from which the only results could be heavy losses for many, until the excessive productive capacity was put out of operation or a new growth in demand caught up with the output.

Concerns which were handicapped by extensive investments in coal lands, which could not all be brought into operation at once, because there was no market for the coal, being thus burdened with heavy carrying charges, were naturally the ones that suffered most in these recurring periods of overproduction and glut. As long as lands adjoining theirs, equally available for mining, were not exploited, the owners felt themselves deprived of an opportunity to earn something from them, and often, indeed, where they had purchased them with a view to mining, were paying carrying charges on them in hard cash. This tended to force such properties, directly or indirectly, into the ranks of producers. As such new competition would not be welcomé, those already in the field, who contemplated continuing so indefinitely, would often buy or lease such lands, establishing gradually large reserves. As long, however, as free competition persisted, and there was a division in the ownership of the coal lands, the price of coal could not rise, in a permanent way, very much above the cost of mining and would often fall below it. There was no margin, therefore, to cover the carrying charges of extensive reserves of coal lands.

These two factors, then, the condition of diminishing cost with enlarged output, and the pressure of the owners of unexploited properties on those that are engaged in operating mines, both tend irresistably to overproduction and losses. Such being the condition of the industry, the obvious remedy of combination has generally been clutched at by the producers, and it is a significant thing that the

agreements among them are from the beginning directed quite as much toward the restriction of output as the fixing of prices. The restriction of output is, in fact, the crux of the whole problem. The ingenious way in which this was accomplished in the anthracite coal fields of Pennsylvania, by a combination of railroads interested in coal mines to limit the railroad shipments from each mine, is a matter of common knowledge, and it has been imitated in other parts of the country.

Once, however, combination is achieved, the tendency of the producers, if left to their own devices, is to go to the other extreme, both in restricting production and raising prices. There is not much doubt that, if all the reserves in our great coal fields and ore fields were opened up for operation to anyone who would pay a royalty equal to the intrinsic advantage (economic rent) of the mineral rights in question, the prices of coal and ore in our most favored producing districts would experience a very marked decline, and with them the values of the deposits. In other words, the very high prices which are demanded in some districts for coal and ore, and for coal and ore lands, are dependent, in a large measure, on the establishment of very large reserves, as well as the concentration of current production in a comparatively few hands, among which understandings, concerning the restriction of output, are easily and quietly effected.

The manufacturing industry does not involve the use of natural resources and so does not contain both of these competition-destroying tendencies. Possibly there are exceptions to the statement, particularly where water-power rights exist—but these only tend to emphasize the importance of the differnce. On the other hand, for those in the manufacturing business who have already committed themselves more or less permanently to a particular branch of it by the investment of capital in works, etc., the conditions are to a considerable extent similar to those surrounding persons engaged in the mining business, in so far, that is, as that branch of manufacture is a business of diminishing costs.

Generally speaking, manufactures under the factory system involve diminishing costs, while those under the household system often have nearly constant costs. Diminishing cost is the very raison d'être of the factory in many branches of industry. Wherever there are considerable general expenses independent of output, the "burden expense" that must be added to the prime cost of labor and materials will always tend to give diminishing costs with increased output. It is a pretty safe assumption that when bonuses are offered to workmen for extra large output the object is to take advantage of this diminishing cost. One does not need to suspect Carnegie, for example, of sporting proclivities in reading of the "records" formerly made at Homestead, or at the Edgar Thomson mills.

It is interesting to note that to this fact, in connection with excessive competition, Carnegie himself attributed the development of combinations in manufactures. In an article in the North American Review in 1889, he wrote as follows:

> It is worth while to inquire into the appearance and growth of trusts and learn what environs produce them. Their genesis is as follows: A demand exists for a certain article, beyond the capacity of existing works to supply it. Prices are high and profits tempting. * * * New partnerships are formed, and new works are erected, and before long the demand for the article is fully

satisfied and prices do not advance. In a short time the supply becomes greater than the demand, there are a few tons or yards more in the market for sale than required, and prices begin to fall. They continue falling until the article is sold at cost to the less-favorably situated or less ably-managed factory; and even until the best-managed and best-equipped factory is not able to produce the article at the prices at which it can be sold. * * * As manufacturing is carried on to-day, in enormous establishments with five or ten millions of dollars of capital invested, and with thousands of workers, it costs the manufacturer much less to run at a loss per ton or per yard than to check his production. Stoppage would be serious indeed. The condition of cheap manufacture is running full. Twenty sources of expense are fixed charges, many of which stoppage would only increase. Therefore the article is produced for months, and in some cases that I have known for years, not only without profit or without interest upon capital, but to the impairment of the capital invested. * * * It is in the soil thus prepared that anything promising relief is gladly welcomed. * * * Combinations—syndicates—trusts—they are willing to try anything. * * * Such is the genesis of "trusts" in manufactured articles.

It would take, indeed, a wide knowledge of the technique of many branches of manufacture to enable one to express an opinion as to the extent to which diminishing costs prevail in the manufacturing industry, and a very exact knowledge of a particular branch to tell in what degree it prevailed therein. Probably there is no such thing, generally speaking, as a final best unit of manufacturing plant; it all depends on the volume of business and the improvements in technique.

The great significance of diminishing costs in transportation is admitted on all sides, and by some who deny its existence in manufactures.

There is a branch of trade closely connected with both manufactures and transportation which is coming more and more under the influence of this factor, namely, the distribution of commodities. Whether the distribution of commodities is affected in an important degree by this principle depends chiefly on the technique. It is impossible to consider this subject in detail, but it may be pointed out that it prevails in the most conspicuous degree in those systems of distribution which require elaborate equipments for transportation, storage, and sale. A good illustration is found in the fresh-meat trade. A successful business to-day requires a large equipment of refrigerator cars, icing stations, and local "coolers" for storage. The plant involves a large expense, which can be borne economically only by a large volume of sales. An even better illustration, perhaps, is found in the sale of illuminating oil. The elaborate mechanical equipment used in the bulk distribution of this commodity, which includes storage tanks, tank cars, tank ships, tank wagons, and in some cases even pipe lines for refined oil, necessarily involves an enormous capital expense, which is made economical only with a very large volume of business. The cost of distribution per gallon diminishes rapidly with the increase in the volume of sales. These, like other elaborate methods of distribution, are generally calculated to serve more than one end, and to render more than one advantage. As means of obtaining a sure market for a commodity, as well as means for wresting away the business of rivals, they have important uses. The important fact for the present discussion, however, is that the distribution of commodities, like the manufacture of them, is often subject to diminishing cost with increased volume of business. This naturally tends to develop excessive competition, which may become destructive of all but the most

powerful, if the competitors do not come to some agreement. In other words, the conditions are present for a natural monopoly.

It is a much simpler matter to state the causes of combination and monopolies than to discover the remedies for them, or for their particular abuses or defects.

Combinations and monopolies may be regarded, on the one hand, as things wholly bad, or, on the other hand, as social phenomena producing effects in which good and evil are mixed. If the first view is adopted, we should seek to abolish combinations, either by direct prohibition, or by taking preventive measures looking to the removal of all the causes. If the second view is taken, we must first determine what are the evil results of combinations, and then consider what methods are best adapted to cure them, whether by removing the causes or by applying some antidote to the abuse. While there is a good deal of difference of opinion among well-informed and disinterested people as to whether combinations are wholly bad or only bad in so far as they produce certain effects, there is naturally a general agreement in the opinions as to the bad effects. The principal evils or abuses attributed to combinations appear to be as follows:

1. The exaction of exorbitant prices from consumers.
2. The depressing of the prices of raw material or the wages of labor.
3. Rebates.
4. Unfair competition.
5. Improper and fraudulent practices in the financial conduct of corporations.
6. Engrossing the natural resources of the country, or patented inventions, and making the control of them the basis for killing off competition, or for an extortionate price policy toward consumers.
7. Dumping or selling commodities in export markets at lower prices than at home.

Formerly a good deal used to be said of the wastes which combinations and monopolies were guilty of, but less is heard to-day on this matter. This waste used to be attributed to the lack of competitive stimulus and the discouragement of small individual enterprises. The chief indictment, however, was the destruction or dismantling of plants which were found superfluous by the combination. It is quite evident, of course, that some of the abuses mentioned above, as commonly attributed to combinations and monopolies, exist also under conditions of active competition. Price cutting, railroad rebates, watered stock and dumping, for example, are phenomena quite as characteristic of the competitive régime as of the monopolistic, although such abuses acquire a much graver import in the latter case. Exorbitant prices, on the other hand, may be regarded, in tendency, at least, as characteristic of the latter. Although selling prices are often higher at times under the competitive system, the tendency is for the prices under a combination or monopoly to exceed them on the average. The abuses of unfair competition also, though frequently existing to some extent under free competition, are not generally of a very harmful character unless practiced by a concern with monopolistic powers. So also the engrossing of natural resources may be carried to a considerable degree by competing concerns, but this becomes of much more serious consequence when a

combination or monopoly arises. When the process of absorbing natural resources has been carried very far, this is apt to be the result.

The first remedy that is ordinarily suggested for almost any kind of social abuse is a legal prohibition. If this plan is adopted two difficult questions must be answered: First, what is the exact offense that the law is to prohibit? second, is a general prohibition of all kinds of combination and monopoly capable of enforcement under the given conditions of public sentiment and business practice?

As to this last question, it must be considered that the business world generally regards great combinations, whether rightly or wrongly, as the natural and necessary development of trade, and declares in picturesque metaphor that "natural laws can not be repealed by statute." A statute law, of course, is just as much a condition of economic development as any other circumstance—it may be an important or an unimportant one depending on a good many circumstances, but particularly, in countries with popular government, on the degree to which it commands the support of public opinion. It is at least doubtful whether the drastic application of some of the penalties of our State antitrust laws would be supported by public opinion.

There also appears to be a real difficulty in fixing the definition of the offense committed by establishing a combination or monopoly which will be satisfactory to the practical economist and the jurist. This has been found in Europe, where the legal conditions are much simpler than in the United States. Our difficulties are twofold, depending not only on the nature of the act, but also on our form of government. The people of the United States are in a peculiarly unfortunate position in attempting to regulate these matters, on account of the constitutional limitations of both State and Federal Governments. The constitutional limitation on the Federal Government in regard to commerce is an unfortunate historical survival. While under the Constitution the power of the Federal Government to regulate corporations is often spoken of as being limited to those doing an interstate business (and this is the purview of the Sherman antitrust law), yet as a matter of fact the power of Congress extends to various other subject matters which would give it additional powers of control; for example, patents, post roads, etc. What is really needed is a revision of the Constitution—a revision upward—whereby the organic law of the State, in this as in other respects, shall be made to meet the demands of modern industrial civilization by providing for the enactment of a general code of commercial and corporation law. This, it must be admitted, is at present a counsel of perfection.

The problem of defining the offense of combination or monopoly must be left to the lawyer, if a general prohibition is to be the remedy. Modifications of the Sherman Act have been proposed in some quarters, looking to the legalization of reasonable agreements. As is well known, the Supreme Court in the Trans-Missouri Freight Association case held that all agreements to fix railroad rates, whether the rates so fixed were reasonable or not, were in restraint of trade and prohibited.

Whatever may be thought of the plan for relaxing the severity of our Federal antitrust law, mentioned above, the history of the devel-

opment of combinations and monopolies in the United States seems to indicate that a completely satisfactory remedy is not found in criminal prohibition. Until some better device is found, however, for checking combinations which are clearly obnoxious to the public welfare, it is probably better to have an imperfectly designed and sporadically applied prohibition than to have no defense at all. Furthermore, the general position may be taken, that, while great combinations may afford important advantages in developing and exploiting natural resources, or in organizing and cheapening the manufacture and distribution of commodities, and while in particular they may give to this country a stronger position in international competion than it would otherwise possess, yet none of these considerations is of great weight in comparison with the necessity of preventing one class of the community from unfairly oppressing another and of compelling all persons and corporations to be obedient to just laws.

A powerful and untrammeled government could easily abolish combinations or monopolies by a variety of measures without resorting to the criminal law, but it would be important to consider whether the remedy adopted might not be worse than the disease. Remedies for combinations and monopolies should be applied with proper regard to the abuses and to the causes. Apart from the questionable expedient of a simple prohibition, there is no panacea.

Consideration may now be given to particular remedies.

1. Where a monopoly is the result of a legal grant, it could in general be abolished by simply repealing the grant (subject, of course, to any constitutional limitation); or, in any case, a recurrence thereof could be prevented by refraining from making such grants, or making them only under restrictions that would prevent any objectionable results. In the case of public franchises, it is already customary to limit the term of the privilege, and to exact guaranties for the just treatment of the public. A good illustration is found in the system sometimes used in fixing the price of gas, whereby the increase of dividends is dependent on reductions in price. An easily cured defect of the patent law of this country appears to be the right of the holder to prevent the use of the article absolutely. This right has been abused, especially by concerns seeking to establish monopolies. In this connection the possibility of controlling combinations through patent rights may be noted; for example, Congress might restrict the use, purchase, or sale of a patent by a combination or monopoly.

2. The cause for a very important class of monopolies is found in the exclusive possession or control of natural resources, of which water rights and mineral deposits are perhaps the most important examples. The most effective way to prevent monopolies from being established in this way is obviously to prevent such property rights from being acquired, at least permanently, by any private person or company. Where the community has the original title, mere business interest would suggest that grants of such rights without restrictions, or in perpetuity, were wasteful and improvident. In any case, in order to prevent possible monopoly and exploitation of the public, the State or Federal Government should retain or acquire such rights for themeselves, to a certain extent, and eventually allow them to be operated by private interests under definite restrictions concerning the methods of operation and the conduct of the business, and, in

some cases, by prescribing rates or prices. This is being done already in some Western States with regard to water rights, but the principle is applicable to various natural resources. The constitutional limitations of the Federal Government are more serious here than in any other case, and this is particularly regrettable, because individual States can hardly be expected to adopt the policy most conducive to the welfare of the whole country in instances where their particular interests are not identical with it. Pennsylvania, for example, would make very little effort to prevent monopoly prices in anthracite coal, the bulk of which is sold outside of the State. In cases where such a policy was deemed impracticable it might be worth while to try the remedy, already applied in some German cities, and recently adopted in the English budget, namely, to levy a tax on the unearned increment in value from such natural resources. Or, the State might, by eminent domain, take the reversion of such property after a fixed term, say 30 years, paying down now the present value of the reversion.

3. Undoubtedly the most prolific, and at the same time the most demoralizing, cause of monopoly in the United States has been favoritism—particularly in the railroad rebate or special rate. It is important to note that rebates are, to a very large extent, the result of excessive competition, and that with the permission of railroad pooling the chief incentive to this practice would be eradicated. Economists have long admitted that this is desirable in conjunction with rate regulation, though they have been unwilling generally to advocate permitting it in other branches of business, partly because they did not always see that the causes tending to combination were similar in character, but chiefly because they did not think there was any feasible system of preventing abuse of such a privilege. The rebate is, of course, merely one of numerous devices intended to give one shipper an advantage over another. This is one of the causes which should be attacked in the first instance by prohibitory legislation and drastic penalties. In order to make such legislation effective the most thorough administrative supervision is necessary, including the power to examine books and papers, both of transportation companies and shippers.

4. Unfair competition may be the cause for the formation of a monopoly, as well as the means of maintaining it. This term is an elastic one, and includes a variety of practices which may occur under a competitive as well as a monopolistic system. Here, again, criminal legislation would do much to end the abuses. A prohibition of local price cutting and of bogus independent companies seems feasible from the legal standpoint. The practicability of a law against local price cutting is illustrated by the actual Kansas law with respect to the sale of petroleum, and the legal propriety of a law of this kind has been vouched for by no less an authority than the present Secretary of State. Just what form a law against local price cutting should take can not be adequately considered here; it might be desirable to limit it to cases where prices were cut below cost or to cases where the prices were cut with the intention to injure a competitor. In this case, of course, some rule of evidence should be established which would make the law effective. In all cases due allowance should be made for differences in cost of transportation or for differences in manufacturing cost at different points

of supply. The chief difficulty with such a law is in applying it to other commodities than staples of commerce, i. e., to articles for which the measures of quantity and quality are not easily fixed. For this reason it could be successfully applied, perhaps, only to a limited number of specific commodities.

Excluding competitors from obtaining materials, facilities, etc., would need more particular analysis and definition than can be given the subject here. One competitor, for example, may be such an important purchase or otherwise so influential that on his demand the seller may refuse to sell to anyone else. In some lines of business, chiefly, if not invariably, where some element of privilege enters, an obligation exists to supply all would-be customers. Illustrations are found in common carriers, warehousemen, innkeepers, companies supplying water, light, etc. The application of this rule to business generally does not seem advisable, although every case ought to be considered on its merits. The so-called commodity clause in the Hepburn Act, which aimed to prevent railway companies, in certain cases, from producing a commodity which was an important article of freight, and in which commodity they might, directly or indirectly, assure to themselves an unfair advantage over competing producers, is a good example, in purpose at least, of the sort of legislation needed in this direction. While common carriers could of course be prohibited from denying equal facilities, it would be quite another matter to compel combinations which held supplies of natural resources to sell them at reasonable prices. On the other hand, where patented machines or instruments were controlled by a monopoly, it might be required by law to allow the use of them to all under fair terms. This might involve some control over the system of rental, where that plan is used. The refusal to rent one machine, for example, unless others are also taken should be prohibited; otherwise a patent which contemplated a monopoly in a new invention might lead to a monopoly in things already in common use.

Certain kinds of exclusive contracts are undoubtedly to be included in the term "unfair competition," and as such should be placed under the ban of the law. This has already been done in some States where certain exclusive contracts are declared to be in restraint of trade. Espionage by corrupting the agents of carriers, of competitors, or public employees in order to obtain information of a competitor's business and similar practices should be prohibited also. Criminal legislation in this respect has been developed much further in Europe than in the United States.

5. Certain monopolies owe their existence, at least in a considerable degree, to superior efficiency. What can be done to prevent such a monopoly? A criminal prohibition against efficiency or any attempt to hamper it unfairly is certainly not to be recommended. To let such a monopoly loose on the public and to trust simply to potential competition to keep it straight is another answer to the problem, but not a very reassuring one under our present conditions and laws. Such a combination, if extensive enough, could probably by means of local price cutting and other means of unfair competition discourage any would-be competitors and, with a possession of a confirmed monopoly, turn and exploit the consumer. Where, however, a monopoly rested purely on superior efficiency, without the aid of unfair advantages or unfair competition and without the posses-

sion of special franchises or sole control of natural resources, it might be allowed to continue in its monopolistic course as a public utility, but it should be put under scientific observation as an economic curiosity.

6. A monopoly may be established simply on the basis of an agreement among, or consolidation of, all the producers of, or dealers in, a commodity. Including consolidations within the meaning of the term "combination," it appears at once that the question as to a remedy for a monopoly of this kind depends on the question as to the remedy or remedies for the various sorts of combinations.

As combinations are often simply the forerunners of monopolies, their causes are often indirectly the causes of monopolies. On the other hand, the particular conditions that make monopolies possible are often the causes in some degree of combinations. Avoiding all repetitions on this account, the remedies for combinations will now be considered.

1. Of our State corporation laws, which encourage the formation of combinations by permitting unreasonable and often almost fraudulent capitalization, as well as a variety of abuses of promotion and underwriting, little need be said. There is not much difference of opinion as to the desirability and practicability of reform. If laws were passed by the States forbidding excessive capitalization and unreasonable contracts with underwriting syndicates, the incentive to, and facilities for, organizing trusts would be greatly diminished. Stricter rules about holding corporations and the permissibility of one company holding stock in another would make it possible to prevent many obnoxious combinations. The real remedy in this respect, however, is not to be sought from the State, but from a federal code of corporation law and a system of federal corporations. Apart from curing the general abuses of corporation law, already referred to; the Federal Government could set bounds to the system of promiscuous intercorporate shareholding and also the absolute consolidation of corporations. In this manner the most important devices for forming a present-day trust would be brought under Government control.

2. Some combinations depend on a protective duty. The remedy here is suggested by the cause, but, whether it will be regarded as worse than the evil intended to be corrected, will depend generally on whether the opinion is that of a free trader or protectionist. The protectionist's usual objection is, that the abolition of a protective duty may indeed destroy a trust in some cases, but that it will also destroy the outsiders who are competing with it. The Canadians have tried to solve this difficulty by providing that, when the commodity protected by a duty comes under the control of a combination, the duty on such commodity is revoked. Our most conspicuous and powerful trusts, with the exception of the Sugar Trust, do not depend to any important extent on the tariff. It might be opined in regard to the Sugar Trust that, instead of cutting out a useful article of revenue by abolishing the differential on raw and refined sugar, it would be a good thing to levy an internal excise tax to correspond. While tariff duties might well be abolished on certain commodities which are controlled by monopolies, it would be preferable, as a rule, to have this done by law rather than by administrative action. In any case, only grave injury to the public welfare should be the basis of

changing the customs duties, when once they are properly adjusted to the national welfare and national industry.

The bounty system of protection, while it has distinct theoretical advantages in some respects, is not generally favored, but it may be noted in this connection that it possesses the peculiar advantage that it may be withdrawn from the offending combination without injury to (indeed to the advantage of) the innocent outsider.

3. Combinations are sometimes called into existence to oppose trade-unions. In olden times the English law forbade workingmen to combine in order to obtain better terms of employment. Such an act was termed a conspiracy. To-day the laws of the land permit to workingmen an unfettered right of combination, but deny the same to the employers. The remedy for combinations among employers is not to be sought, however, in the prevention of combinations among laborers. The reasons of public policy which have led to the repeal of laws against workingmen's combinations are too broad in scope to be affected by their occasional relation to employers' combinations.

4. For combinations established to counteract other combinations it is evident that a remedy aiming to remove the cause would be found only in a general remedy for combinations, which, in that case, would cure both cause and effect.

5. Combinations may arise from excessive competition. The only way to prevent such excessive competition would appear to be in restricting it by limiting the output or sales of each competitor, by fixing prices, or by some similar device. This, however, is just what combinations themselves aim at. In other words, the only cure for the cause is the thing to be prevented. Hence, combination established by the State is, strictly speaking, not a solution of the problem. Such a plan has already been tried in Austria-Hungary in connection with the sugar industry, and in some other instances.

6. Where a combination is formed simply because an opportunity presents itself to control output and raise prices without any of the special causes of combinations already enumerated there naturally does not appear to be any single peculiar remedy, because the circumstances which make such a course of action feasible are generally various and complex. It is impossible, practically speaking, to try to discover or anticipate all the conditions or circumstances which may induce combinations. There must be, therefore, a residual class of combinations for which a general remedy is available. One remedy for this kind of combination would be that of the French law, which prohibits such combinations as result in giving to a commodity a price other than that which would result from free competition. As interpreted by the courts, this is a prohibition of such combinations as charge unreasonable prices. A criminal law, however, which has to be applied by tedious judicial processes is not a very satisfactory remedy for such abuses.

In considering the means of doing away with combinations and monopolies by eradicating the causes, we have already had occasion to note various abuses, which are causes as well as effects of such organizations. Particularly, we have considered the problems of unfair competition, promotion abuses, the engrossing of natural resources, and the means of preventing them. These are not really abuses which are peculiar to combinations. The same is true of

dumping. The discussion of a remedy for this practice would take us too far, but it might be prohibited like local price discrimination, although the principles at the base of it are not the same. The principal abuse, however—namely, price extortion—is one that has still to be considered. Avoiding the direct regulation of prices, the effort has been made to reach a remedy indirectly by the application of the principle involved in the prohibition of usury. But as usury laws are seldom convenient in business affairs, so a similar limitation in respect to the prices of commodities, apart from those furnished by public municipal utilities, common carriers, and analogous enterprises, would not prove very practicable. In both cases, however, greater police power over petty dealings with the poorest classes might be beneficial. The remedy for this abuse is, in a certain sense, an answer to the whole problem, and it must be found in the remedy for those classes of combinations and monopolies which can not be corrected by the application of measures devised to remove the particular causes, or intended to neutralize them.

Our analysis thus far, as just intimated, has resulted in the conclusion that, while a number of the important causes of combination or monopoly may be removed by specific remedies, there is a number of causes for which no such remedy seems to be available. Of these classes of combinations requiring some general remedy, two are of special importance—first, those combinations which are induced by excessive competition, and, second, those which can not be ascribed to any special cause or set of causes, but result from an opportunity to make an extra profit in that manner. Practically these two classes may not be easily distinguishable, but they are really quite distinct, both in cause and purpose.

The problem is to find a remedy for the necessities of industry without laying the public open to extortion—how on the one hand to allow the producers to combine when necessary to prevent cut-throat competition, and, on the other hand, to prevent them from exploiting the consumer by charging excessively high prices.

The trusts have grown so large and have become so accustomed to the exercise of extensive and arbitrary power that remedies of publicity and moral suasion, which might have been of considerable effect if applied at the beginning, can not be wholly relied on. What is necessary is a real and effective control.

The first obvious idea would be to permit such combinations as were deemed necessary, but to establish some sort of a control over prices. Time does not permit a discussion of the merits or possibilities of this method. While we have already come to accept the power of the Government to fix rates for the services of various municipal utilities, and even of the railway, the application of the same system to all lines of monopolistic industry does not seem desirable. The greatest difficulties are not those connected with a good understanding of the market, although the business man is apt to talk of these matters as great mysteries. The great combinations in recent years have prided themselves on keeping their prices unchanged during very great changes in productive activity and in general market conditions, and even when the country was in the throes of a panic. But while the fixing of reasonable prices for coal, rails, illuminating oil, plug tobacco, or even fresh beef, is probably a much simpler matter than the determination of reasonable railway rates, the need for doing so is not the same. If necessary, the State

could at the present day take over the operation of the railroads. For the direction of industry as a whole, however, the State is not ready, and no man can see far enough into the future to be sure that it ever will be.

Another answer to the problem would be for the Government to become a partner in the counsels, if not in the business, of the combination. A vote in the board of directors and an insight into the most intimate affairs of the combination would undoubtedly greatly strengthen the Government's control, if the right sort of men could be obtained, but this device seems difficult and dangerous.

Allied to this idea is the proposal that the Government should enter certain branches of industry to a limited degree, and, by becoming a factor in the business, exercise a moderating influence. This system prevails to some extent in Germany, particularly in the mining of coal and of potash. It is doubtful whether such a policy is worth while if the object is merely price regulation. Where the conservation of natural resources is at stake, or the preservation of public security is affected, such action might be recommended.

A better solution would seem to be to permit certain combinations, but to limit profits. This is an old-fashioned remedy which has gone out of favor. One reason for this undoubtedly was the fact that adequate methods were not applied for its strict enforcement. A scheme which would appear to be worthy of consideration may be briefly outlined as follows:

Let such combinations as are licensed to do business be taxed at a rapidly progressive rate on their net profits above an exempted minimum—say 10 per cent of the net investment. The tax should be substantial from the beginning, say 10 per cent on the profits exceeding 10 per cent, but not exceeding 11 per cent; 15 per cent on the profits exceeding 11 per cent, but not exceeding 12 per cent, the tax rate increasing thereafter in like manner by 5 per cent on every 1 per cent increase in the rate of profit. On this basis the maximum profit retained by the corporation would be about 20 per cent, under which condition the State would get about 10 per cent.

Obviously the chief difficulty would be to determine the net investment. The subject is too large for a proper discussion here. Whether the cost of the property in question or a physical valuation of it should be taken, or whether tabula rasa should be made of past offenses, and present book values used as a starting point, would make little difference in the long run. If proper bookkeeping methods were imposed on all companies, any inequalities in assessment existing at present would be comparatively unimportant quantities 20 years from now. If the companies in question were obliged to come to an understanding with the Government on this subject before doing business under such a license, it seems likely that even now a reasonably fair valuation could be agreed upon without great expense or loss of time.

This plan, on the one hand, would leave to private interests the task of fixing prices, with sufficient incentive to strive for a profit, and, on the other hand, would set a limit to the exploitation of the public. It involves the recognition of combination as lawful in certain cases. This might be made by the grant of Federal incorporation or the issue of a license. Such a license would confer, of course, no monopoly. Probably it would involve to some extent administra-

tive discretion, guided, of course, by established general regulations and laws. For the purpose of carrying out the law, a special organ of administration would be necessary. This organ should have not only the supervision of the Federal law concerning combinations, monopolies, and Federal corporations, but also act as a licensing, tax collecting, and publicity office.

The various positive measures for the control of combinations and monopolies which have been mentioned or discussed do not exhaust the subject by any means, but indicate in a general way what might be done if a thoroughgoing system of control was planned. Resumed in brief they are:

1. Restrictions in the grants and uses of patents and franchises.
2. Conservation and control of natural resources, including taxes on unearned increment.
3. Prevention of discriminations in transportation.
4. Prohibition of unfair methods of competition.
5. Provision for abolition or suspension of customs duties in certain cases, or for the establishment of corresponding excise duties.
6. Establishment of a system of Federal corporations under strict control both as to management and consolidation.
7. Prohibition of unlicensed agreements or consolidations.
8. Establishment of a system for Federal license and taxation of combinations.
9. Establishment of an administrative organ to supervise and enforce the laws, and to act as an agent of publicity.

In conclusion, it may be pointed out that if all these remedies were adopted and put into effect there would still remain questions of policy in the administration of the laws which would be of vast importance to the welfare of the country. For example, the Government would have to take a stand on the broad question as to how far it would permit concentration in industry. The adoption of a very thoroughgoing system of control does not commit the administration of the law to destructive, iconoclastic methods. It merely insures the supremacy of general welfare over particular private interests. The establishment of powerful concerns, which virtually acquired possession of the whole market, if they owed their position to superior efficiency, without the aid of natural resources or facilities not open to all competitors, and if they pursued a fair business policy toward all competitors and consumers, would not be necessarily regarded as objectionable.

The general ideas at the basis of this scheme of control may be briefly summarized as follows: First, to remove all the conditions which impede free competition, or facilitate combination or monopoly; second, in those cases where free competition becomes destructive to allow the producers to combine, with safeguards for the public interest. It is not believed that the circumstances under which the licensing of combinations is contemplated would be a great temptation to those who did not really suffer from excessive competition. With a system of Federal corporations and Federal taxation and supervision of corporations, combinations by consolidation could be made impossible, and secret unlicensed agreements could be made ineffective, as well as dangerous, to those who attempted them.

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